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THE

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THE

HISTORY OF ROME.

BY

WILHELM IHNE.

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SIXTH BOOK.

THE CONSTITUTION, LAWS, RELIGION, AND MAGISTRATES OF THE ROMAN PEOPLE.

INTRODUCTION.

Rapidity of Roman conquests.

THE second Punic war was the last struggle for existence through which the Roman republic had to pass. When victory had crowned the heroic perseverance of the senate and the disciplined courage of the citizen-soldiers, the supremacy of Rome in the ancient world was uncontested, and she could enter without hesitation on her career of conquest. Half a century sufficed to reduce Macedonia and the various states of Greece to a condition of partial or complete subjection, to crush and utterly destroy exhausted and humbled Carthage, and to lay in the north of Italy and in Spain the foundation for Roman dominion and Roman culture.

Political relations between Rome and the conquered states.

These conquests brought about a complete revolution in the relations between Rome and the rest of the ancient world. The town on the Tiber had ceased to be merely the head of an Italian confederacy. Rome had become the ruler of numerous islands and continents and the commanding centre round which all the nations of the ancient world were henceforth to be grouped. The questions which now occupied the attention of the citizens of Rome were no longer limited by the narrow horizon of an Italian country town, nor even by the sea which surrounds the Italian peninsula; they concerned the welfare of many millions, living in other countries, under the most varied institutions, political, social and religious. Rome was now in a position to occupy herself with the solution of a problem with which up to that time no conquerors of the ancient world had thought of dealing. She was called upon to prove her title to government, not merely by the

BOOK VI. vigour which had led her to victory, but by the wisdom which would teach her to use her victory for the well-being of the conquered, and to compensate them for the loss of their independence by the blessings of peace, of just government and of material prosperity.

Mistakes of Roman statesmen.

Unfortunately, the Roman republic proved unequal to this great task. It did not even seriously think of undertaking it. Whilst erecting a vast empire, the republic could not bring itself to dispense with those narrow constitutional forms, which had been designed for a small town and a limited territory, and thus its own triumphs and conquests brought about its downfall.

The Roman Comitia.

If we compare the period from the beginning of the republic to the Hortensian laws (from 509 to 287 B.C.) with the period which now followed and extended to the days of the Gracchi (from 287 to 131 B.C.), we cannot fail to notice a very great difference. In the former period constitutional changes followed one another in rapid succession. The republic was no sooner established than the plebeians endeavoured to secure legal protection for themselves and equality with the ruling order. The establishment of the tribuneship was closely followed by the codification of the law in the twelve tables, by the equalisation of the marriage law, by the participation of the plebeians in the government, first as military tribunes, then as consuls, and finally in every magistracy of the republic. The comitia of centuries had hardly superseded the old curiate comitia, when a third form of popular assembly was established by the public recognition of the comitia tributa, the assembly of the tribes. This plebeian assembly rapidly rose to an equality with the older. The restraints and hardships of the old law were removed one after another. The republic grew at the same time within and without. The conquered enemies were received as citizens. The original territory of twenty tribes was expanded step by step, until it embraced thirty-five in 241 B.C.

Meanwhile the Latin colonists spread over the greater

INTRO.

part of Italy, and it seemed not unlikely that the whole of it would by degrees be received into the community of Roman citizenship. But this gradual and, as it would seem, natural development was arrested at the very time when the success which had accompanied it justified the policy hitherto pursued. The Hannibalian war compelled the Roman statesmen to conciliate the different members of their Italian confederacy, and to unite them with Rome by the closest ties of common interest; for the whole of Italy looked upon the Carthaginian invaders as a common enemy. The greater part of the Roman allies remained faithful; and this fidelity deserved to be rewarded. But neither while the danger lasted, would the Romans condescend to secure their wavering allies by promises, nor after the victory would they hear of rewarding them for their services by raising them to an equality with themselves. It seemed as if the lines of constitutional law and public policy which formerly had been so flexible and expansive had now become hard and rigid, and as if the state were no longer in the time of youthful development and growth. Henceforth it remained stationary in those forms and proportions which by this time it had acquired.

Short-sighted narrowness of Roman statesmanship.

Thus, then, it may be said that the constitutional development of the republic attained its highest point in the course of the Punic wars. After the fundamental principles of the republican constitution had been established in the time preceding the Hortensian laws (287 B.C.) the succeeding generations contented themselves with applying these principles to the ever-varying circumstances in which they found themselves, without attempting to introduce new ones. But the change in all outward conditions of power, wealth, culture, greatness and influence abroad was so complete that the old machinery could not bear the strain thus necessarily put upon it. The republican form of government gave way after a severe and long-continued struggle, and finally the monarchy was established on its ruins.

Inadequacy of the old constitutional forms for the new strain put upon them.

In studying the character and working of the Roman

BOOK VI. Methods of dealing with the subject.

constitution, we can only follow one of two courses. We can direct our attention to the formal law, as it was laid down by the legislator in all its technical detail—in other words, we can contemplate the ideal constitution of the republic; or else we can pay attention not so much to the law itself, as to the form which it assumed in the actual course of events, and which necessarily differed more or less from what the legislators intended.

The problem of legislation.

Every constitution has in its working to contend with obstacles which modify its provisions more or less materially, just as the laws of mechanics encounter a certain amount of friction which prevents their complete realisation. No law that was ever passed has been carried out in its entirety. The legislator may have been ever so careful to study the conditions and circumstances to which a law is to be applied; he may be ever so happy in framing the words and in establishing logical order in the different paragraphs; he may even meet with the greatest willingness to acknowledge and carry out the law, but he will nevertheless find it impossible to embrace and classify the infinite variety of the phenomena of actual life in the chapters and schedules of a legal code. Yet, granted that he could accomplish this, he would be unable to stop the growth and development of society, or to compel it to move within the lines prescribed by his legislation. Laws which are suited for one generation, unless they are altered and modified, become more or less unsuitable for the generations that follow.

Modification of existing law.

But life, which is a constant renewal and change, does not allow of any stagnation. It expands and modifies the most rigid forms of existing law and adapts them to the wants of a new age. This adaptation of law to new modes of thinking and acting deserves as much attention in the history of jurisprudence as the creation of new laws. But for the general history of a nation it is of still greater importance. For general or political history has to deal with the actual life of a nation, not with the laws *in ab-*

stracto, but with the mode in which they have been handled and applied. INTRO.

The Romans were distinguished from all other nations, not only by the extreme earnestness and precision with which they conceived their law and worked out the consequences of its fundamental principles, but by the good sense which made them submit to the law, once established, as an absolute necessity of political health and strength. It was this severity in thinking and acting which more than any other causes made Rome great and powerful. Even in the most remote times all rights and duties of individuals were specified with a scrupulous minuteness which may well provoke astonishment, if not admiration. This is apparent first of all in the religion—*i.e.* the divine law—of the Romans. With them religion was not a matter of feeling or speculation, but of law.[1] The divine law, the elder sister of the civil law, was the pattern upon which the latter was moulded. Both were characterised by the same severity, systematic order, deference to fixed formulas, and fear of change. General character of Roman law.

But if the advancing development of intellect and feeling, of understanding and culture, was opening a way for revolt against the narrow and harsh rules of the divine law; if ways and means had been found to escape by interpretation and legal fiction from the necessity of enforcing laws which had been discovered to be unjust; if, for instance, instead of human victims, once sacrificed to the gods, the heads of onions or poppies were substituted, then surely in civil law there was far less reason to hesitate in obeying the demands of advancing culture, although, with truly Roman dislike to innovations, old forms were often allowed to remain, even when they had either become utterly useless, or had at any rate lost their original meaning. Roman attachment to old forms.

The effect of the conservative spirit, so characteristic of the Roman character, exhibited a twofold contrast be-

[1] See below, chap. xiii.

BOOK VI. Organization of the Roman republic.

tween real power and the legal title to it. In the management of internal affairs the people had the formal right of sovereignty, but the senate possessed the true power. With regard to foreign countries, the chief strength of Rome lay in the resources of her subjects; but the formal right of wielding these resources belonged to the Roman citizens. From this unnatural state of things arose the necessity of a revolution, which in all cases is nothing but a restoration of equilibrium between the legal forms of a constitution and the reality of the actual conditions of national life. With the help of the demagogues, the people again attained possession of the supreme power in the state, the subjects shook off the yoke of the minority, first by the social war, and then by the establishment of the monarchy. These revolutions of a later date were foreshadowed in the first period of Roman history, in which step by step the plebs, which formed the body and strength of the nation, obtained equal constitutional rights with the patricians. When all the patrician privileges had been set aside, the republican institutions had reached their full development. Then began the time of foreign conquests, during which the constitutional forms remained as they had been, and seemed to be no longer capable of gradual and periodical modification. It is the object of the following chapters to give a complete view of the organization of the Roman republic such as it appeared in this period of comparative stagnation between the passing of the Hortensian laws, 287 B.C., and the agitation of Tiberius Gracchus, 133 B.C.

CHAPTER I.

THE ASSEMBLIES OF THE ROMAN POPULUS.

The curies and their comitia.

THE division of the Roman people into thirty curiæ, and the assembly called the Comitia Curiata, which dates from the very first period of national existence, survived the downfall of the monarchy and were preserved in the republican age, but they were rather a venerable relic of the past than an essential part of the new order of things. The assembly of the curiæ had ceased to be the expression of the popular will in military and political matters ever since the overthrow of the monarchy, and was retained chiefly for divers formalities in sacred and civil law, which the superstition or the conservative spirit of Rome would not allow to be transferred to any other political body. It was according to curiæ that the people met for the celebration of the festivals of the Fornacalia and Fordicidia,[1] and in curiatic assemblies arrogations took place and testaments were made. It is probable also that on certain occasions the curiæ still continued to administer popular jurisdiction as in the regal period;[2] but we have no means of proving that in republican times they exercised either the right of electing civil magistrates, or that of enacting

[1] Ovid, *Fast.* ii. 525. Varro, *Ling. Lat.* vi. 15.

[2] The right of jurisdiction was an essential attribute of every sort of popular assembly, and was originally of greater importance than the right of legislation, which was rarely exercised. In the earlier period, when political institutions were subordinate to religion, and the sacred law (*fas*) was yet predominant over the civil law (*ius*) all penal jurisdiction was naturally in the hands of the *comitia curiata*, which had a distinct religious character. Even in republican times it seems that whenever the punishment of an offender was the *sacratio* of his person or property, only the *comitia curiata*, and no other body, could pronounce it.

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laws,[1] or that of confirming the decisions of other popular assemblies.[2]

The comitia of centuries.

Immediately after the establishment of the republic the assemblies of centuries (*comitia centuriata*) are found to be in full working order, and, indeed, in a manner so complete and comprehensive that we cannot look upon them as something newly established at that time. From the very first moment that the light of history falls upon them they appear to have full possession of all the rights which they ever possessed at a later period. They are not in any way further developed as time proceeds; on the contrary, they almost immediately begin to be limited in their sphere of action, the assembly of tribes (*comitia tributa*) being placed by their side. It is this latter assembly which increases rapidly in power, encroaches more and more upon the older order of things, and by degrees usurps many of the rights of the centuries with respect to legislation, elections, and administration, thus acquiring that which the elder institution loses. This change soon proceeded so far that without injury to the state the centuries might have dwindled down to a mere formality, just as the curiæ had done at the commencement of the republic, leaving the assembly of tribes as the only exponent of the sovereignty of the people.

[1] Some degree of analogy exists between the *comitia curiata* as preserved in republican times and the English Convocation, which, though practically abolished and deprived of its old powers in the constitution, continues to meet regularly at the beginning of every session of Parliament. Also the formal act of conferring the *imperium* by the *patrum auctoritas* may be matched in the English Constitution by an old custom which contains the shadow of an ancient but long-abolished privilege. This is the nominal right of Deans and Chapters to elect bishops, conferred upon them by the royal *conge d'élire*. The English Deans and Chapters would no more think of refusing to elect the person indicated by the Crown than the Roman senate could refuse the *patrum auctoritas*.

[2] The ceremony of conferring upon the newly-elected magistrates the *imperium*, or supreme military and judicial authority, by a *lex curiata* was continued throughout the republican time, but the curies were on these occasions represented by thirty lictors, which shows that it was an empty formality. Another formality, which had formerly been an important constitutional right, the conferring of the so-called *patrum auctoritas*, belonged, not to the assembly of curies, but to the senate. Vol. i. p. 134.

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The division of this sovereignty among two assemblies differently organized, though composed of elements essentially the same, is peculiar to the Roman constitution, and cannot fail to strike us as very strange. The fact that no conflict ever broke out between the two assemblies is explained not so much by a careful limitation of their respective rights as by the circumstance that the difference between them was more formal than real, that the centuries in the detail of their organization became more and more democratic, whilst, on the contrary, the development of the tribes took place in the opposite direction, and tended to make them more aristocratic than they had been at first.

Conflict between these two assemblies.

It follows from what we have said that the original form of the *comitia centuriata*, as they are described by Livy, Dionysius, and Cicero—*i.e.* the division of the people in five classes, with their respective census, and one hundred and ninety-three centuries[1]—was not created by a single legislator, in the manner in which modern charters are made; but that it was the final result of an historical development which precedes the commencement of trustworthy Roman history—*i.e.* the time of the consular government.[2] It is impossible to ascertain the original sources from which the numbers of classes, with their centuries and the census-sums fixed for the five classes, are taken. Thus much we may safely assert, that these numbers and divers other particulars given by the historians are not drawn from the pretended 'commentaries of king Servius Tullius,' as was readily believed by an uncritical age.[3] This is evident from the fact that the sums of the census, ranging from 100,000 asses down to a minimum of 12,500 or 11,000 asses, cannot possibly have

History of the comitia of centuries.

[1] See vol. i. p. 64.

[2] See vol. i. p. 67.

[3] The *commentarii Servi Tulli*, which Livy (i. 60, 4) quotes as a kind of charter or organic law, containing the groundwork of the republican constitution, belong to those fictitious documents of the regal period, of which the *leges regiæ* and the *commentarii Numæ* are parts. They all owe their origin to a comparatively late period, are certainly not older than the decemviral legislation, and received additions and alterations from time to time until they found their way into the annals.

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been very old, and must necessarily have been frequently modified with the growth of wealth, the introduction of coined money, and the reduction in the standard of value. Owing to the scantiness of our information it is not likely that the researches of historians will ever succeed in tracing the successive steps of these modifications.[1] For the political history of Rome this question, though not altogether impertinent, is not of great moment. It suffices on the whole to discover the character of this element in the constitution in order to comprehend its influence upon political life, and this character is established with sufficient clearness. We know that the constitution of centuries at first formed the foundation of the Roman military system; that all the citizens, without distinction of rank, were divided according to certain property qualifications into five classes; that military service and war taxes were imposed upon them in proportion to their property, and that their share in the rights of sovereignty depended on the class to which they belonged.

Change in the Servian constitution.

But at the time when Livy and Dionysius wrote their histories, the constitution which they looked upon as the Servian—*i.e.* the oldest known in Rome—had undergone a change which had made it more democratic than it had been. We are not informed in what this change consisted. Hence the strange circumstance that we are better acquainted with the detail of the political organization of Rome at the time of the legendary king Servius than at the time when our historians lived and had frequent opportunities, as Dionysius relates, of seeing the working of the centuriate assemblies, of watching their proceedings, and of studying every particular of their organization. Whilst they enumerate how many centuries of the first class, of the other four classes, of the knights, smiths, carpenters and musicians had the right of voting before the commencement of the republic, and how high was the census of each class, they do not tell us whether

[1] See Böckh, *Metrologische Untersuchungen*, p. 427 ff.; Schwegler, *Römische Geschichte*, i. p. 760 ff.

at their time the five classes still existed, how many centuries there were, what was the position of the knights, &c., and whether the smiths' and carpenters' centuries had been abolished or not. They relate only one thing: that the constitution had become more democratic,[1] and that it no longer corresponded with the original constitution of Servius, because the number of centuries was regulated in a certain proportion to the thirty-five tribes, whereas Servius had made his divisions irrespective of the four tribes which existed in his time.[2]

Attempts to determine the nature of this change.

On the basis of these vague observations and a few accidental allusions to the *comitia centuriata* in Livy, Cicero, and others, attempts have been made since the revival of historical science to find out the nature of the transformation which Livy and Dionysius mention, and at what time it took place. It is not surprising that no positive result should have been obtained, for the materials were too scanty. On the form of the later *comitia centuriata* modern writers hold, in the main, two different opinions. Niebuhr[3] thought he might conclude from the words of Livy that the number of centuries was diminished by the reform from one hundred and ninety-three to seventy centuries of infantry;[4] that these seventy centuries were formed of the thirty-five tribes, the older men in each

[1] Dionys. iv. 21: *οὗτος ὁ κόσμος τοῦ πολιτεύματος ἐπὶ πολλὰς διέμεινε γενεὰς φυλαττόμενος ὑπὸ Ῥωμαίων· ἐν δὲ τοῖς καθ' ἡμᾶς κεκίνηται χρόνοις καὶ μεταβέβληται εἰς τὸ δημοτικώτερον, ἀνάγκαις τισὶ βιασθεὶς ἰσχυραῖς, οὐ τῶν λόχων καταλυθέντων, ἀλλὰ τῆς κλήσεως αὐτῶν οὐκ ἔτι τὴν ἀρχαίαν ἀκρίβειαν φυλαττούσης, ὡς ἔγνων ταῖς ἀρχαιρεσίαις αὐτῶν πολλάκις παρών.*

[2] Liv. i. 43, 12: Nec mirari oportet hunc ordinem qui nunc est, post expletas quinque et triginta tribus duplicato earum numero, centuriis iuniorum seniorumque ad institutam ab Servio Tullio summam non convenire. Quadrifariam enim urbe divisa . . . . partes eas tribus appellavit . . . . neque eæ tribus ad centuriarum distributionem numerumque quicquam pertinuere.

[3] Niebuhr, *Röm. Gesch.* iii. p. 382, Germ. edit.

[4] Livy's words, '*post expletas quinque et triginta tribus duplicato earum numero*,' refer to the year 241 B.C., when the number of tribes was increased to thirty-five, the maximum it ever reached. But Niebuhr fixes the reform of the *comitia centuriata* in the year 304 B.C., when the number of tribes was only thirty-one. According to his hypothesis, therefore, the number of centuries in the reformed comitia was sixty-two, and rose to seventy in 241 B.C.

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tribe representing one century, and the younger men another.[1] The century of the later period would therefore have been equal to half a tribe. Niebuhr further conjectured that to these seventy centuries of infantry were added eighteen centuries of knights, consisting of twelve centuries of citizens with a census of one million asses, and six patrician centuries without a property qualification.

But this view cannot be maintained, because it takes no notice of the division of the people into classes, the most essential element in the Servian constitution. Livy, speaking of the difference of the later *comitia centuriata* compared with those of Servius, does not say that the classes were abolished, but merely remarks that the number of centuries had been changed in consequence of the number of tribes having been increased to thirty-five. Had the census been entirely abolished for all classes, he would surely have mentioned it. But we have still stronger evidence that the classes were not abolished; for in several passages of later writers[2] not only classes are mentioned, but actually the *five* classes,[3] so that it cannot be doubted that they continued to exist.

Theory of Huschke.

Professor Huschke[4] is therefore right in maintaining that, even after the reform of the centuries, the old divi-

[1] Niebuhr's opinion is that in the reformed centuries the patricians, irrespective of their census, were contained in the *sex suffragia*, or knights' centuries; that the plebeian citizens of a census above one million of asses formed the other twelve centuries of knights; and that the remainder of the citizens who had less than a million of asses and more than four thousand asses formed twice as many centuries as there were tribes: in 304 B.C., accordingly, 62 centuries, half of *juniores* half of *seniores*; after 241 B.C. 70 centuries, equally divided between *juniores* and *seniores*.

[2] Sallust, *Jug.* 86: Marius interea milites scribere non more maiorum neque ex classibus, sed uti cuiusque libido erat capite censos plerosque. Comp. Cicero, *De legib.* iii. 19, 44, *Pro Val. Flacco*, 7, 15, *De Repub.* iv. 2: Quam commode ordines descripti, ætates, classes, equitatus, in quo suffragia sunt, etiam senatus. The Lex Voconia of the year 169 B.C., and even the Lex Thoria, 118 B.C., presuppose the existence of the first class.

[3] Cicero, *Academ. prior.* ii. 23, 73: Quis hunc philosophum non anteponit Cleanthi, Chrysippo reliquisque inferioris ætatis? qui mihi cum illo collati quintæ classis videntur.

[4] Ph. E. Huschke, *Verfassung des Servius Tullius*, Heidelberg, 1838, pp. 611–690

sion into classes was preserved. The mode in which this was done he supposes to have been a very strange one. He makes out the thirty-five tribes to have been constituted as subdivisions of the five classes. Ten tribes formed, he thinks, the first class; the second, third, and fourth classes consisted each of four tribes; and the fifth, of thirteen. Each of the tribes constitutes one centuria of *juniores* and one of *seniores*. By adding to these seventy centuries the old eighteen centuries of knights, Huschke obtains the number of eighty-eight centuries for the reformed *comitia centuriata*. No conjecture could be more arbitrary and fantastical than this. There is no evidence whatever of the existence of tribes organised according to property qualifications, and the number and arrangement of these tribes which Huschke proposes are utterly chimerical.

Theory of Pantagathus.

The most plausible supposition was made by Octavius Pantagathus;[1] but this also is based upon no external evidence, and its chief recommendation is the facility with which it combines the centuries with the thirty-five tribes. Pantagathus supposes that the number of centuries, which varied very much in the five classes of the Servian constitution (being respectively eighty, twenty, twenty, twenty, thirty), was in the later constitution equalised among all the classes, so that there were seventy centuries in each class. These seventy centuries of each class furnished for every one of the thirty-five tribes one century for the older men and one for the younger. All the five classes contained, therefore, five times seventy, or three hundred and fifty centuries. If to these are added eighteen centuries of knights, the sum total amounts to three hundred and sixty-eight centuries. It remains uncertain whether in this later organization there were also centuries of smiths, carpenters, and musicians; but this is not very probable, as the centuries no longer formed the foundation of the army.

[1] The conjecture of Pantagathus is communicated in a note by Ursinus to Livy, i. 43, printed in Drakenborch's edition of Livy.

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Question of the date of this change.

The conjecture of Pantagathus has, in its essential parts, been approved by most modern investigators, and we may accept it as on the whole agreeing with the vague allusions of Livy and Dionysius to the *comitia centuriata* of the later period. But a second question now arises. At what time did the new order of things originate? Our authorities do not give us the least clue to answer this question, and very great differences of opinion consequently exist among modern writers. Guesses have been made as to the time, ranging from the abolition of the monarchy to the last year of the first Punic war—*i.e.* from 510 to 241 B.C.—and even beyond this period to the year 179 B.C., covering a space of more than three hundred years,[1] during which the most desperate struggles between patricians and plebeians were fought out. All through this long period of disturbance and excitement we hear not one word of a dispute concerning a reform of the *comitia centuriata*. Whilst the plebeians attacked the privileges of the patricians one by one, and gradually acquired equal rights, they apparently submitted to the organization of the centuriate assembly, which so much favoured the patricians that the plebeians found it impossible for a long time to effect the election of a member of their body as a magistrate, even after they had obtained the formal right of election. This silence is so eloquent that the reform has been generally believed to have taken place between the years 292 and 218 B.C., the narrative of which period has unfortunately been lost with the second decade of Livy's work. The year accordingly fixed upon for the reform, not without some internal probability, is the year 241 B.C., because in this year, with

[1] It has been supposed that the reform of the centuries took place:—1, soon after the establishment of the republic; 2, by the legislation of the decemvirs; 3, soon after the decemvirate; 4, in the censorship of Appius Claudius and C. Plautius, 312 B.C.; 5, in the censorship of Q. Fabius and P. Decius, 304 B.C. (this is Niebuhr's opinion); 6, in the year 241 B.C., when the number of thirty-five tribes was completed (this is Mommsen's opinion); 7, in the censorship of L. Æmilius and C. Flaminius, 220 B.C.; 8, in the censorship of M. Æmilius and M. Fulvius, 179 B.C. See Becker's *Handbuch der röm. Alterth.* ii. 3, p. 30.

the addition of the two last tribes (the thirty-fourth and thirty-fifth) the number of tribes was finally closed. This supposition was thought to be more than any other in accordance with the words of Livy, in which he explains the number of centuries in his time as being based upon the thirty-five tribes complete, and compares this arrangement with the old order of things. Nevertheless, though there is decidedly some weight in the argument derived from the loss of the second decade of Livy, it cannot but be considered strange that no other record of so radical a reform should have survived, and still more that we hear nothing whatever of a struggle for the reform which, one would think, must have lasted some time. This circumstance is not explained by the remark [1] that this much-talked-of reform appears to have had very little influence upon the inner life of the republic. The Romans were too conservative, too practical, and too rational to take the trouble merely for the sake of a theory or a whim to change the form of a venerable and tried institution. We must seek some other cause for the silence of all historians with regard to the reform of the centuries, and it seems that we have no alternative but to conclude that it is altogether a mistake to speak of the reform as if it had been effected by a single act of legislation.

The change probably a gradual one.

We are, on the contrary, inclined to believe that the forms of the Servian constitution did not remain unchanged from the time of its first establishment until they were once for all remodelled, but that they underwent from time to time more or less important modifications; in fact, that they were periodically adapted, in the growth of the republic, to changing circumstances and requirements. These gradual modifications affected the figures of the census, which, as is universally admitted, must have been considerably raised in the course of time, and were not expressed in money until very late.[2] They affected, further, the mode and manner of making the census, of determining and valuing the goods which were

[1] Mommsen, *Rom. Gesch.* i. 823.

[2] Mommsen, *Röm. Gesch.* i. 310.

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subject to it; they produced the increase of the number of centuries in the fifth class;[1] and they affected the supplementary centuries of workmen and *capite censi*. It was the business of the censors to effect such changes, of course in accordance with principles recognised or enjoined by the senate, to cause them to be sanctioned by the religious solemnity of the Lustrum—*i.e.* to be indirectly approved by the people. The censors had, on the creation of new tribes, the task of incorporating them with the old ones, and of distributing the new and the old citizens among all the tribes in a manner required by the political wants of the state in general, by the organisation of the army, which was enlisted according to tribes, and by the order of the popular assemblies, *comitia tributa* as well as *centuriata*.[2]

Proportion of the centuries to the classes.

All this is admitted and subject to no doubt. Now, the circumstance that the later order of centuries did not agree with the order established by Servius is most easily explained by the hypothesis, firstly, that the Servian constitution was based upon the twenty tribes existing at

[1] It seems established beyond doubt that the oldest plan of the numerical arrangement of the centuries was symmetrical, and that the eighty centuries of the first class, which contained all the patricians, were matched by eighty centuries of plebeians, distributed into four classes of twenty centuries each. The increase of the number of the centuries in the fifth class from twenty to thirty was a departure from this symmetry, caused, no doubt, by the necessities of war, which drew upon the most numerous class of citizens for a larger contingent of troops. See vol. i. p. 68, n. 1.

[2] In drawing up the list of citizens, and thus periodically modifying the constituencies of the electoral districts, the censors were invested with all but absolute and irresponsible power, and acted in the manner in which king Servius himself was supposed to have acted. The formal right to do so was conferred upon them by a *lex centuriata de potestate censoria*. They were not called upon to justify their proceedings; no other magistrate was allowed to interfere with them by intercession or obnuntiation; in fact, they had full dictatorial power. Comp. Lange, *Röm. Alterth.* i. 670. Even after their retirement from office they were exempt from responsibility. Mommsen, *Röm. Staatsrecht*, ii. 1, 292. Their proceedings were not always very regular, nor could mistakes and arbitrary decisions be avoided. But these decisions were final, and must have been so, as otherwise the census could never have been completed in the proper time. So it could happen that strangers were wrongfully included in the list of citizens, like the father of Perpenna, the consul of the year 130 B.C Valerius Max. iii. 4, 5.

that time,[1] whereas at the later period there were thirty-five tribes; and secondly, that Servius had not allotted equal numbers of centuries to all classes, as was the case in the more democratic organisation of later times, but had made the centuries of the first class equal in number to the other four. The innovation, therefore, of which Livy and Dionysius speak, did not consist in an adaptation of the centuries to the tribes—for that had existed from the first—but in a new apportioning of the centuries among the five classes. We are not informed of the precise rate of this apportioning. Dionysius says only that the new arrangement was of a more democratic nature. It is, therefore, not improbable that, as Pantagathus supposes, an equal number of centuries was allotted to every class. The number seventy suggested by Pantagathus is merely conjectural: it recommends itself only by its internal probability. With this degree of probability we must be satisfied; it would be waste of time were we to speculate further without any material proofs on the later organisation of the centuries.

Popular tradition of the Servian constitution.

The organisation of the centuriate comitia, as we have just shown, was for many ages in a state of perpetual change and development, like all other Roman institutions. It was at no period looked upon as finally settled in its ultimate form and unchangeable, but it was periodically adapted to the shifting conditions, to the growing wealth, numbers, and power of the people. But even in the oldest form known to us, the form ascribed to king Servius Tullius as its author, it has already reached a degree of maturity, of completeness and refinement of detail, which shows that it must have gone through a long period of development, and that the experience of many years must have worked to give it its shape. The common story of its origin is therefore utterly incredible. We cannot believe that it sprang complete and perfect from the head of a legislator; that this legislator was prevented

[1] Not, as Livy, i. 43, evidently thinks, on four tribes. See above, p. 13, n. 2.

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from carrying it into practice; that his successor ruled independently of it; and that on his expulsion the Romans drew it forth from the public archive, and applied it to their wants in the emergency of a revolution. The whole story is fantastic and absurd. The scheme of the centuriate assemblies, without any doubt, grew slowly, gradually, and naturally out of the conditions and necessities of the time; and as it had not been called into existence by one act of legislation, so it was not reformed by another single act of legislation, but was kept in working order and repair, and was improved and enlarged by the wisdom of generation after generation.

Decay of the centuriate comitia.

Simultaneously with the gradual division and weakening of the power of the chief magistrates, and with the establishment of the tribuneship and the *comitia tributa*, the centuriate comitia lost ground. The greater part of the judicial power immediately passed over to the tribes. Although the right of inflicting capital punishment remained with the centuries, the so-called *comitiatus maximus*, yet the tribes judged all minor offences and exercised an effective control chiefly by fines, the infliction of capital punishment being from the first exceedingly rare. With the establishment of the lower magistrates, from the ædiles downwards, the right of election also for these offices was vested in the tribes. All that now remained unimpaired in the hands of the centuries was the election of the consuls, censors and prætors, and their supreme right of deciding questions of war and peace.[1]

[1] With regard to treaties of peace, it has been maintained by Rubino (*Untersuchungen über röm. Verfassung*, 1839, p. 258 ff) that the centuriate comitia never possessed the right of giving or withholding their sanction; that in the earlier periods down to the Samnite wars the magistrates and the senate were alone competent to conclude treaties of peace, though in declarations of war the people in their assemblies of centuries had to be consulted. It is true that in the earlier ages the concurrence of the centuries to such negotiation is not mentioned, and that the statement of Dionysius, iv. 20, who asserts their constitutional right, is not of great weight; but we must bear in mind that the narrative of the earlier wars is very short, that the consent of the people to the conclusion of peace, which released them from further services and burdens, was mostly a matter of course, and needed not to be specially mentioned, so that no inference can be drawn from the silence of the

CHAP. I.

Effects of the extension of Roman dominion.

If this right appears to be less prominent in later times than at first, this circumstance is explained by the extension of the Roman dominion. As long as the wars that had to be waged threatened the immediate vicinity of the town, and extended no further than Latium, Campania, Samnium, or Etruria, the people fully comprehended and took a lively interest in the policy pursued by the senate and the magistrates. But when the theatre of war was removed to countries beyond the sea, the questions which had to be decided were no longer within the reach of the popular comprehension, and the approval of the actions of the government by the comitia was so much a matter of course that only one case is mentioned of a declaration of war being negatived; but even this isolated opposition was soon overcome: the popular resolution was cancelled and the policy of the senate obtained the approbation of the people.[1] In most cases the annalists no longer thought it worth while to mention the popular approval of the foreign policy of the senate, and nothing proves more clearly the complete establishment of the rule of the nobility and the entire absence of opposition on the part of the people than the circumstance that it was possible, nay, apparently easy, for the senate and the nobility to carry on, year after year, the bloody wars in Spain and Northern Italy, which were so oppressive for the people and lucrative only for those who governed. No opposition was offered, and scarcely an occasional murmur of discontent was heard among the ranks of the men in the centuriate assemblies who formally decreed the wars, and who in reality were obliged to wage those wars and pay for them with their blood.

meagre annals. It is therefore, after all, probable that the centuries, as they had to be consulted before war was declared, had also the corresponding right of approving the conclusion of peace.

[1] At the beginning of the second Macedonian war, in 200 B.C. See vol. iii. p. 18. Liv. xxxi. 6, 3: Rogatio de bello Macedonico primis comitiis ab omnibus ferme centuriis antiquata est. After the consul had made a speech to explain and recommend the senatorial policy, the people were called upon to vote again, and, as Livy says, ch. 8, 1: In suffragium missi, uti rogarat, bellum iusserunt.

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Legislative powers of the comitia.

With regard to legislation, the *comitia centuriata* lost even more of their ancient authority than they did in their influence upon foreign affairs. After the peace between patricians and plebeians the legislation completely passed over into the hands of the *comitia tributa*. After the Hortensian law (287 B.C.), there is no indication of laws having been passed in the centuries. In the fully-developed republican constitution we can therefore regard the *comitia centuriata* as being limited on the whole to the election of the highest magistrates, to the formal decision in questions of peace and war, and to the supreme penal jurisdiction.

Increasing importance of the comitia of tribes.

Whilst the public action of the *comitia centuriata* was shrinking within narrower limits, the assemblies of the tribes gained more and more ground. From the moment the tribuneship was established the rights of the plebeians steadily increased, and with them grew the competency of their comitia. On the foundation of the *leges sacratæ* the omnipotence of the tribunes of the people and of the decrees of the plebeian tribes was gradually built up. The right of making laws binding on the whole people was formally granted to the plebs by the Publilian law in the year 471 B.C., and was repeatedly confirmed after the second and after the last secession by the laws of 449 and 287 B.C.[1] With the last of these laws, the Hortensian law, the long struggle of the two classes came to an end, and the republic reached the highest development, which carried it victoriously through all the wars for the dominion of the world. But even before this last formal

[1] I have endeavoured to show (*Rhein. Museum*, 1873, pp. 353-379) that the three laws which conferred on the tribes the full right of legislation for the Roman people—the Lex Valeria Horatia of 449 B.C., the Lex Publilia of 339 B.C., and the Lex Hortensia of 287 B.C.—were substantially identical, and that the Lex Publilia of 471 B.C. ought to be considered as the foundation or original charter of all these laws which established the democratic constitution. I have, moreover, suggested that this Publilian law of 471 B.C. ought to be substituted for the Publilian law of 339 B.C.; that the latter had nothing to do with the confirmation or extension of the right of the tribes; that it ought to be struck out of the list of the three laws affecting the legislative rights of the plebeians; and that it was only inserted in this list by a mistake, being confounded with the Publilian law of 471 B.C.

acknowledgment of their unlimited competency, the *comitia tributa* had assumed and practically exercised the right of legislation and of determining the actions of the executive in a manner corresponding to the admitted sovereign rights of the people. The constitutional development of the republic is principally the work of the *comitia tributa*. By degrees the *comitia centuriata* now retire from the field of legislation, which remains in undisputed possession of the younger and more democratic assembly. Public law and private law were both elaborated by a long line of plebiscites. Thus the prerogatives of the magistrates were more accurately defined by the Porcian laws, which restricted their power of inflicting corporal punishment; the age requisite for filling the various magistracies in succession was fixed by the *lex annalis* of the tribune L. Villius (180 B.C.); the number of quæstors was raised to eight (267 B.C.); re-election of the same person to the censorship was prohibited (265 B.C.); a *prætor peregrinus* was appointed (probably 242 B.C.); two prætors were appointed for the provinces (227 B.C.); the number of prætors was increased to six (198 B.C.); the senators were forbidden to engage in commercial transactions (219 B.C.). All these plebiscites refer to public law. Of the large number of enactments passed by the assembly of tribes in the department of private law we will mention only the Voconian law, on the right of women to inherit property (169 B.C.), and the Sempronian law (193 B.C.), on debts contracted by allies. The great change effected in the mode of criminal prosecutions through the establishment of permanent law-courts (the *quæstiones perpetuæ*) is also attributable to the *comitia tributa*, which in the year 149 B.C. established the first law-court of this kind through the Lex Calpurnia; and thus it is evident beyond dispute that the *comitia tributa* were throughout the whole period acknowledged as that assembly by which the Roman people exercised their sovereign legislative rights.

With little success, also, though with never daunted

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zeal, the popular legislators endeavoured to improve public morality by a series of luxury laws—for instance, the Lex Oppia (215 B.C.), which will be discussed lower down. The tribes made dispositions affecting the state property, as we see by a law (the Plebiscitum Lucretium, 172 B.C.) regarding the farming of the revenues of Campania. Nay, even matters of religion and public worship were settled by plebiscites; thus, for instance, in the year 208 B.C. a decree of the tribes introduced the Apollinarian games in Rome.

Executive power of the comitia of tribes.

Apart from this extensive legislative power, the comitia of tribes had the right to decide in all questions of administration and government. In conformity with the spirit of the constitution, the people entrusted all matters of government and administration to the magistrates elected by them, who were assisted by the senate as permanent councillors. It was taken for granted that the magistrates would carry out the intention of the people who had appointed them. It was therefore advisable, whenever there was any doubt concerning the popular inclination, to consult the will of the people in important questions,[1] and thus it happened that the Roman tribes were called upon to take an actual part in the government in a manner which almost threatened the permanence of the aristocratic rule.

Conduct of foreign policy.

Of all the more important political decisions, the only one which remained uncurtailed in the hands of the *comitia centuriata* was the declaration of war.[2] On the

[1] The cases are very numerous in which administrative questions were decided by the people (Lange, *Röm. Alterth.* ii. p. 166, 629 ff.). An instance which occurred in the year 169 B.C. is especially instructive. In that year Rutilius, a tribune of the people, attacked the censors for their proceedings in managing the public contracts and the collection of the revenue. He declared he would ask the people to annul the censorian contracts. Liv. xliii. 16, 6: Rogatio sub unius tribuni nomine promulgatur, quæ publica vectigalia aut ultro tributa C. Claudius et Ti. Sempronius locassent, ea rata locatio ne esset; ab integro locarentur. The dispute led to a formal impeachment of the censors, which was a violent and illegal stretch of the tribunician power, and caused a great constitutional conflict. But the right of the people to cancel an administrative measure of the censors was not questioned by anyone.

[2] See above, p. 20.

other hand, treaties with foreign states and alliances were generally presented for approval to the *comitia tributa*,[1] whereby the final decision on all points of foreign policy was placed in the power of this assembly. Closely allied to this was the right of the tribes to interfere in the detail of the management of war,[2] to prorogue the imperium,[3] nay, even to confer it on men who had not been consuls the year before or at all,[4] to allot provinces to the generals, and to mark out to them the line within which they were authorised to command. Thus in the year 202 B.C. Scipio by a decree of the tribes obtained the prolongation of his command in Africa and the right to conclude peace with Carthage.[5] Similarly in 147 B.C., the younger Scipio obtained the province of Africa, and afterwards, in 134 B.C., the command in Spain, by an extraordinary decision of the assembly of tribes.[6]

Finance and revenue.

There was one department in which the share of the people in the government of the state was fraught with great danger. This was the disposal of the public funds, the use to be made of the *ager publicus*, the sending out of colonies and the provision to be made for poor citizens by allotments of land. Here was an unsound spot in the otherwise healthy organisation of the Roman commonwealth, and here the irregular manner of disposing of public property produced evils of the greatest magnitude.

[1] Lange (*Röm. Alterth.* ii. p. 632) gives a complete list of such public treaties.

[2] Even in the critical period of the Hannibalic war the popular assembly of the tribes ventured to meddle directly with military matters. A plebiscitum decreed that Minucius, the Master of the Horse, should have an equal command with the dictator Fabius. Liv. xxii. 25. Polyb. iii. 103, 106. See vol. ii. p. 223.

[3] Liv. xxvii. 22, 6. In the prorogation of the imperium the annalists generally omitted to mention the vote of the people, so that it almost appears that a decree of the senate alone was sufficient. Compare what has been said above, p. 21, on the omission by the annalists of the co-operation of the comitia in treaties of peace.

[4] Liv. xxiii. 30, 19; xxvi. 2, 5. See Lange, *Röm. Alt.* i. p. 629.

[5] Vol. ii. p. 456. Liv. xxx. 27, 3; xxx. 40, 9.

[6] Vol. iii. pp. 353, 403. Liv. epit. 51. Valer. Max. viii. 15, 4. Appian, *Libyc.* 112.

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The custom of allowing conquered land to be occupied by the first comer had even in the most ancient times led to abuse on the part of the rich, and to the oppression of the weak and poor. The agrarian law of Licinius [1] was a vain endeavour to restrain the rapacity and violence by which the nobility contrived to appropriate to themselves the fruits of victory.

Absence of opposition to the nobles.

The patience with which the mass of the commons submitted to the selfish and even illegal proceedings of the nobility would be indeed astonishing, if the general course of events did not show that there was no organised political opposition to the rule of the nobility during the whole period from the final peace between patricians and plebeians to the time of the Hannibalic war. In this long period the people were without leaders; the nobility, united in all political questions, were in fact all-powerful. The legislative omnipotence and sovereignty of the people was therefore a harmless theory which did not interfere with the government of the nobles, at least so long as no popular leaders stood up against the ruling faction. As soon as a resolute man placed himself at the head of the people to defend their material interests, the rule of the nobility would be overthrown, unless they resolved to oppose by force the right guaranteed to the people by the constitution. This time seemed to have arrived when, shortly before the Hannibalic war, a resolute statesman once more undertook to defend the cause of the people.

Career of Caius Flaminius.

Caius Flaminius was the first who, after a long interval, offered a decided resistance to the hitherto untroubled rule of the nobility.[2] In spite of the opposition of the senate, he proposed and carried a law for the distribution of the coastland of Picenum among poor settlers; a measure calculated to be salutary, not to the poor population alone, but to the whole state. This policy of C. Flaminius was regarded by the nobility as the first symptom of a decay of the old state of things,[3] because it

[1] Vol. i. p. 314 ff. [2] Vol. ii. pp. 126, 194 ff.

[3] Polyb. ii. 21, 8: Γαΐου Φλαμινίου ταύτην τὴν δημαγωγίαν (the agrarian

showed that a serious divergence existed between theory and practice, and that if constitutional law, as it stood, were carried out, the rule of the nobility would be swept away to be replaced by a democratic government. But the rupture did not now go deeper. The dreadful Hannibalic war, which broke out immediately after, occupied the entire attention of Italy, silenced all internal disputes, and united the whole strength of the nation to ward off the common enemy. Even if C. Flaminius had not been one of the first to perish in that bloody war, his success as a demagogue would nevertheless have been brought to a speedy end.[1] The calamities of the great war were then followed by a series of magnificent conquests, which, like all victories in antiquity, brought in their train booty and profit to high and low, and silenced for a time the desire for reforms, until at last successors to Flaminius were found in the Gracchi.

Incorporation of new citizens in the tribes.

If we consider the prominent position which the assembly of tribes occupied in the political life of the Roman republic as the embodiment of the sovereignty of the people, we cannot be surprised that the form and constitution of this assembly should be the subject of frequent political agitation. In fact, the internal struggles which affected the constitution of the republic were intimately connected with the peculiar organisation of the tribes. We hear a good deal of their periodical reform, whilst not a trace is perceptible of any agitation for the reform of the centuriate comitia. This is a sufficient proof that the latter formed no longer the centre of political life. From the time of the censor Appius Claudius Cæcus, 312 B.C.,[2] the question was repeatedly agitated, whether new citizens accruing from the emancipation of

law) *εἰσηγησαμένου καὶ πολιτείαν, ἣν δὴ καὶ Ῥωμαίοις, ὡς ἔπος εἰπεῖν, φατέον ἀρχηγὸν μὲν γενέσθαι τῆς ἐπὶ τὸ χεῖρον τοῦ δήμου διαστροφῆς.*

[1] A similar postponement of reform took place in England in consequence of the wars with the French Republic. William Pitt occupied a much more domineering position in the councils of England than C. Flaminius did at Rome, and yet he dropped all ideas of reform in the stress of war.

[2] Vol. i. p. 433.

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slaves or otherwise should be enrolled in the four city tribes, or in the country tribes. The question was never fully set at rest, until at last all restrictions which separated Romans from non-Romans gave way, and the whole flood of the Italian allies was poured into the narrow limits of the thirty-five tribes. The policy of Appius Claudius has already been explained.[1] As the republic increased in power and importance, the population of Rome also grew larger, and the new inhabitants, whether descended from freedmen, allies, or foreigners, were in every respect, social as well as economical, on an equal footing with the privileged citizens, without, however, enjoying the rights of citizenship, and therefore without being liable to perform the duties of citizens. It was impossible to turn these people out of Rome, and it was unwise to let them remain in the state as a perfectly strange element. In one way or another they had to be incorporated with the state. The prejudice against strangers, who were regarded as a meaner and inferior race, had to be overcome: they had in some way to be recognised as citizens. If the comitia of centuries had been the only popular assembly, it is probable that no difficulty would have arisen. The new citizens would have been distributed according to their property among the five classes, and they could hardly have gained any preponderance over the old citizens or even a disproportionate influence. But the greatest power was in the hands of the *comitia tributa*, and, as in the tribes votes were counted by heads, it was a serious risk to receive a number of strangers dwelling in the town in such a manner among the citizens that they should be inscribed as voters among all the tribes.[2] Of the members of the

[1] Vol. i. p. 435.

[2] It should be borne in mind that, though the division of the people into tribes was originally based upon actual residence, so that each tribe was made up of the inhabitants of a certain district, change of residence did not involve a change of tribe, and that accordingly in course of time the tribes lost the character of local divisions, and the same quarter of the town might contain members of each of the thirty-five tribes.

country tribes, a small number only lived near enough to the town to attend the frequent political meetings. The inhabitants of the more distant villages, if they had not abundant leisure—*i.e.* if they were not wealthy—were mostly unable to avail themselves of their right of citizenship in the comitia. If, therefore, the numerous inmates of the city, without changing their domicile, had been entitled to act as voters in all the tribes, it is obvious that the scanty voices of the country population would have had little or no influence in forming a majority in each tribe. The shopkeepers, tradesmen, and artisans of the city, would in fact have represented the Roman people in the thirty-five tribes, and their votes would have outnumbered those of the peasantry, the true backbone of the nation.

The registration of Fabius.

This result was surely not desirable,[1] and we cannot blame as obstinate aristocrats those statesmen who urged that the less respectable portion of the citizens, which was recruited from strangers and freedmen, and knew nothing of agriculture, should be restricted in their votes in order that the original character of the people depending mainly upon agriculture might be preserved. This object Quintus Fabius gained in 304 B.C., as we have seen above,[2] by limiting the new citizens to the tribes within the town. In spite of their preponderance in numbers, they had therefore only four out of thirty-one tribal votes at their

[1] In England the constitution does not give to the population of London and the other large towns a number of representatives corresponding to their numerical importance. In the continental constitutions which have not grown up gradually, but been made artificially, representation is regulated entirely by numbers, so that Paris and Berlin send more deputies than large country districts. Whatever one may think of the fairness of the democratic demand that the large towns should have a share in the legislation proportionate to their population, there can be no doubt that if the Roman system of direct voting in national comitia of the whole people could ever be introduced again nobody would propose that the vote of the different divisions of a country should be given by members of these divisions residing in the capital. Such a mode of voting would make the capital really absolute mistress of the whole nation, and so it was in Rome under the regulation which allotted the freedmen as new citizens to all the tribes.

[2] Vol. i. p. 436.

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disposal,[1] and as the influence of the rich was always very great in the country, and as those living at a distance could not take part in the political life unless they were rich, the Roman tribes became more and more aristocratic in their practical working, although in principle their organisation was thoroughly democratic. This circumstance explains to a certain extent the good understanding between the tribes and the ruling nobility. There was no opposition and no jealousy. Year after year the tribes, under the influence of the nobility, appointed for tribunes of the people men who were acceptable to the nobility, and these tribunes were the agents through whom the senate laid their propositions for laws and administrative measures before the people to be approved or rejected by them. A certain rule and practice was thus worked out convenient to both parties. Where there is no opposition based on principles, there is no violent excitement in political life. The assemblies for elections and laws were rarely numerously attended. It would seldom happen that out of nearly three hundred thousand citizens, a few thousand attended the meetings; on ordinary occasions a few hundred would represent the whole people, and this was sufficient so long as the people were convinced that the senate and the magistrates would take measures of which the public opinion approved.[2]

Political importance of the comitia of tribes.

A clear proof of the diminished influence of the comitia of centuries is the fact that the Roman historians have not thought necessary to detail or even to refer to the nature of the changes which in course of time must necessarily have taken place in their organisation and which, according to Livy and Dionysius,[3] actually did take place. This proof becomes still stronger when the same historians inform us that the reforms of the tribes

[1] The number of tribes was at that time thirty-one.

[2] According to Cicero, *Pro Sestio*, 51, 109, it happened sometimes that hardly five citizens in a tribe appeared to give their vote: Leges sæpe videmus ferri multas. Omitto eas, quæ feruntur ita vix ut quini, et hi ex alia tribu, qui suffragium ferant, reperiantur.

[3] Above, p. 13.

occasioned repeated and violent struggles, which, as we shall see hereafter, became more violent after the time of the Gracchi, and led to a complete transformation of the whole of Italy into one single community of Roman citizens. We see, then, in these facts a confirmation of the old law of development—namely this, that from the very first secession of the plebeians it was this part of the Roman people, organised in the *comitia tributa*, and acting under the tribunes of the people, to which the development of the constitution is principally due.

The comitia of tribes and non-voters.

It is quite characteristic of this assembly of the tribes that the question was never raised whether the patricians should be admitted to them. It never occurred to the Romans that it was legally possible or even conceivable for a patrician to vote in these plebeian assemblies, any more than for patricians to be elected tribunes of the people. The assemblies of tribes have always been purely plebeian.[1] But if the patricians were excluded from them without ever demanding admission, this was not the case with another class of the population who were not, like the patricians, doomed to die out, but who on the contrary threatened to grow more numerous than the genuine Romans. This class consisted of those citizens who did not enjoy the full civic rights (*cives sine suffragio*), a class in which the old contrast between plebeian and patrician citizens was renewed on a larger scale, and whose struggle for equal rights clearly shows that in the development of the republic the same principles were at work at later periods which we can observe in the first.

Citizens and foreigners.

A jealous exclusion of foreigners from the rights of citizenship was quite in agreement with the religious groundwork of the ancient state. Foreigners could not participate in the national worship, and were therefore legally incapable of taking any share in the civil government of

[1] Attempts have been made by Niebuhr, Göttling, and others to fix the time when the patricians were received as members into the plebeian tribes, which reception was assumed to be an undoubted fact. Compare the author's paper, 'Die Entwickelung der Tributcomitien,' in the *Rheinische Museum*, 1873.

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a properly organised state, to which they did not belong by birth. The weight of this objection to foreigners as a class of men necessarily excluded from the national worship was exhibited in the opposition which the patricians made when the plebeians claimed equal rights. It was argued by the former that plebeians could not possibly share in the *auspicia*. This argument seemed for some time unanswerable. Yet, however important religious considerations may be, material requirements cannot be for ever set aside by them. When resistance to social and political reforms is too stubborn, the desire for reform changes into the necessity of revolution. In Rome, fortunately, reason gained the victory over religious and political prejudices, and the plebeians obtained their full right of citizenship; they entered but did not destroy that community of sacred and profane rights from which they had long been excluded. Their victory over religious prejudices, combined with the progress of civilisation and the influence of Greek enlightenment, gradually caused religion to lose its former influence on constitutional questions. The political struggles which followed no longer depended on religious considerations. They were of a very different nature from the disputes between patricians and plebeians. The old parties had been opposed to each other as two distinct corporate bodies. The struggle was violent because the whole mass of the plebeians were engaged in it as an undivided party. It was terminated and finally closed when the plebeians gained their demands, because none of them were excluded from the fruits of victory, and none were left outside those barriers which had been forced. On the other hand, the dispute which was now commencing for admission to the full rights of citizenship was renewed each time after the demands of one set of claimants had been satisfied, because an agency was at work which continually supplied new candidates for the coveted rights.

Citizens and slaves.

This agency was slavery, the source to which so many radical defects of ancient life in its social, political, and

moral aspects are due. The emancipation of slaves was the safety-valve for a society based upon slavery. It produced a class of people intermediate between citizens and foreigners, between those who enjoyed full rights and those who enjoyed none; but it was a population which could not remain long in that position without endangering the safety of the state. The freedmen and citizens, on an equal footing in economical and private affairs, gradually became so closely united that it was not wise or even possible to maintain political distinctions between them. Statesmen who recognised this could, without being demagogues, receive the freedmen as citizens in order to combat that conservative spirit which would have barred out all new comers from the exclusive privileges of the old citizens. A thorough knowledge of what was necessary to the state caused men of different political opinions to unite in the wish to add fresh blood to the Roman community by admitting new citizens, and at the same time by converting internal enemies into friends. It was only in the manner and degree of such innovations that different tendencies and views manifested themselves; hence the periodical changes and additions made to the body of citizens, though on the whole tending in one direction, exhibit during several centuries perceptible fluctuations.

The freedmen and the tribes.

So long as the number of slaves in Rome was limited, as was the case not only in the time of the kings but down to a late period in the republic, numerous emancipations were out of the question, and the number of freedmen consequently could not increase to any considerable extent.[1] It must, therefore, be an anachronism, so

[1] It has been erroneously inferred from the *lex Manlia* of 337 B.C. that even at that comparatively early period there must have been at Rome a great number of slaves. The *lex Manlia*, which was passed on the motion of the consul in the camp of the Roman army at a distance from Rome, imposed a tax (*vicesima*, or five per cent.) on the price of liberated slaves. This extraordinary procedure, which was never repeated, can be explained only on the supposition that the army of Manlius made an unusual and unexpected number of prisoners, who, as was often the case, were at once ransomed by their countrymen, and not carried to Rome as slaves. The consul might have reserved the whole ransom for the benefit of the state. Instead of doing this,

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frequent with the Roman annalists, when some writers [1] speak, even in the regal period, of masses of freedmen being enrolled in the city tribes. These writers imagined the state of affairs which existed in their time to be nearly as old as the Roman commonwealth itself, and they ascribed unhesitatingly to Servius Tullius the first measure for enrolling liberated slaves among the tribes. Even in the first century of the republican period we have no reason to suppose that a great increase took place in the number of slaves, nor, consequently, of freedmen. It was not until the destruction of Veii [2] that a change was brought about, and only in the course of the Samnite wars that the number of prisoners of war, and therefore of slaves and freedmen, could swell so as to affect the social and political condition of Rome. At the same time these most destructive and sanguinary wars reduced the number of Roman citizens, and it was therefore a wise measure most appropriate to the time when in the year 312 B.C. the censor Appius Claudius inscribed in the rolls of the tribes all the freedmen then existing, thereby granting them full rights of citizenship.[3] To all appearance this was the first time that freedmen were received in any great numbers among the citizens. Plutarch [4] says this explicitly; but even if we attach little weight to his words, yet the fact is not the less certain because of its intrinsic probability and the absence of all evidence to the contrary. It is, therefore, to Appius Claudius that we must ascribe the first step taken in that internal transformation of the body of Roman citizens which was caused by the periodical admission of freedmen. His reform, however, was of short duration. It is true the new citizens were never again deprived of their rights, but Quintus Fabius, the censor for the year 304 B.C., confined the whole of them within

he allowed his army to keep the money as booty, binding them only by a law, passed on the spot, to pay into the public exchequer a tax of five per cent. This event, therefore, is no proof of the large extension of slavery in the fourth century B.C., but rather of the reverse.

[1] Dionys. iv. 22. Zonaras, vii. 9. [2] Compare vol. i. p. 252.

[3] Vol. i. p. 435. [4] Plutarch, *Poplicola*, 7.

the four city tribes, thus clearing the country tribes of the town population recently received into them. This was a measure of great importance, inasmuch as the country tribes were thus enabled to preserve their original character of rural districts, containing chiefly the peasantry which was under the influence of the great landed proprietors. The four city tribes, on the other hand, contained the great mass of tradespeople, artisans, and the poorer classes generally. Now for the first time a difference in rank was established between the town and country tribes, and the latter declared to be superior to the former, whereas previously the town districts, where the noblest Romans resided, were held to be at least as respectable as those of the country.[1]

The censors and the freedmen.

It was not, however, regarded as a rule by succeeding censors that the new citizens should be limited to the four tribes within the city of Rome. The freedmen, increasing in numbers from census to census, were received among the citizens according to the principles laid down by Appius Claudius, so that shortly before the Hannibalic war there were freedmen as new citizens in every tribe. This state of things, which could not but undermine the aristocratic and truly Roman character of the country tribes and place all the power in the hands of the townspeople, was put an end to, not by a stubborn aristocrat, but by the much-abused popular leader Caius Flaminius, the far-sighted statesman who strove to give fresh life to the Roman peasantry, and new vigour to the state by extensive distributions of land in the district of Picenum, which had been conquered from the Gauls.[2] Flaminius, during his censorship (223 B.C.), again limited the new citizens (but probably only those received by him, not those entered in the country districts since the time of Quintus Fabius) to the four city tribes.[3] By this means

[1] Comp. vol. i. p. 434, note 3.

[2] Vol. ii. pp. 126, 195.

[3] It was from these four city tribes that in 217 B.C. an *exercitus urbanus* was raised as well as soldiers for the fleet. Apparently it was the intention of Quintus Fabius, and of all the censors who restricted the new citizens to the city tribes, that the soldiers levied from them should be employed for such

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he followed the example, not of the innovating demagogue Appius Claudius, but of the cautious conservative Fabius, who for his wise measure is said to have received the surname Maximus.[1]

The urban and the rural tribes.

The Hannibalic war interrupted measures of a similar character. We hear nothing of further reforms in the organisation of the tribes, and therefore we may conclude that the practice established by Flaminius was followed by succeeding censors, and that the freedmen who were received from time to time remained restricted to the four city tribes. An additional proof of this is furnished by the fact that in the course of the Hannibalic war we hear repeatedly of city legions which must have been formed of these new citizens. A further confirmation of this view is the motion which the tribune Quintus Terentius Culleo laid before the tribes in the year 189 B.C., and which, as it appears, contained the first regulation by a distinct law for the reception of freedmen into the tribes. This law of Terentius is known to us only from a brief mention in Plutarch,[2] and therefore we do not know its tendency and contents accurately. But, as it appears to have been called forth only by the rule which had been observed since the time of Flaminius, and which restricted the freedmen to the four city tribes, it probably, in opposition to this rule, provided that the policy of Appius Claudius was again to be adopted, and that new citizens should be admitted into all the tribes.

Censorship of Lepidus and Fulvius.

This is rendered still more probable by the report of a step taken by the censors Lepidus and Fulvius in the year 179 B.C., ten years later. These censors, it appears, applied the law of Terentius in a modified form; they admitted

extraordinary services as the defence of the city, as a reserve force, and for manning the fleet, whereas Appius Claudius, and those of his successors who inscribed the freedmen in all the tribes indiscriminately, wished to make no such distinction, but to raise the military force equally from all the tribes.

[1] This, however, is a mistake, as appears from Polybius, iii. 87, 6. The apocryphal statement, repeated by most historians, shows in what light the policy of Fabius appeared to the later politicians of the aristocratic party.

[2] Plutarch, *Flamin.* 18.

freedmen to all the tribes, but allowed themselves to be guided by principles of policy and expediency, not by mere chance or caprice. It is not known on what principles the censors had hitherto acted in distributing the new citizens among the tribes. Perhaps Appius Claudius and his successors entered each freedman into the tribe to which his former master belonged; perhaps they portioned them out to the different tribes in equal numbers. Nothing is reported on this subject before we arrive at the censorship of Lepidus and Fulvius, 179 B.C. Of these, however, Livy tells us[1] that they distributed the voters among the tribes according to rank (*generibus hominum*), legal claims (*causis*), and occupation (*quæstibus*). Hence we may conclude that Terentius Culleo had proposed to admit the freedmen to all the tribes, but that the censors Lepidus and Fulvius, conforming to this law in general, had made the admission to a country tribe dependent on certain conditions (*causæ*), such as a fixed amount of landed property. Whoever could not comply with these or similar conditions was probably not admitted by the censors to the country tribes. Whoever carried on a craft, business or trade, was placed in a town tribe. Such regulations of course did not affect those Roman citizens whose rights dated from an earlier period. We are prevented from speaking with absolute certainty of the measure taken by the censors in 179 B.C., by the brevity and obscurity of the notice which we have received on this point; but that it related to the disputed question of the distribution of new citizens among the tribes is evident, not only from the words themselves, but also from the historical connection in which they appear.

[1] Liv. xl. 51, 9: Mutarunt suffragia regionatimque generibus hominum causisque et quæstibus tribus descripserunt. This passage, on the proper interpretation of which so much depends, is by no means clear, and has puzzled every commentator of Livy. By *quæstus* he could only have understood *trade* or *profession*; but the other two terms, *genera hominum* and *causæ*, are very vague, and admit of a variety of explanations. Perhaps Livy simply copied the words from an older writer, and purposely avoided more precise expressions because he was in doubt of the exact meaning himself.

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Censorship of Gracchus, 169 B.C.

But this arrangement by no means settled the long-disputed question. Ten years later, in 169 B.C., we find the censor Tiberius Sempronius Gracchus, the father of the two great popular leaders, attempting to overthrow entirely the policy which had been adhered to for so long a time with regard to the admission of freedmen to the citizenship. He actually meditated refusing the rights of citizenship to those who had gained their freedom since the last census, and even tried to take it away from those who had obtained it before. On this subject he engaged in a dispute with his colleague, Appius Claudius, a worthy descendant of the great statesman of the Samnite wars, who was the first to perceive the necessity of an amalgamation of old and new citizens. After a violent quarrel, the two censors came to an understanding that every freedman who had a son of more than five years of age should remain in the tribe in which he had been entered by the last censors; that the owners of landed property of upwards of 30,000 sesterces in value should be entered in the country tribes; all other freedmen, however, in one of the four city tribes—namely, the tribus Esquilina, which was decided upon by lot.[1] The old principle of the Servian constitution of centuries was thus acknowledged in the arrangement of the tribes. The influence of the poorest class of people was restricted to a minimum, and those freedmen who gave proofs of thoroughly conservative sentiments and of attachment to Rome, either by owning larger portions of land or by marrying and establishing families, were ranked with the best class of citizens.

Census of 164 B.C.

In the census of Lucius Æmilius and Quintus Marcius, in the year 164 B.C., the lists of Roman citizens show an increase of about 25,000 citizens, in spite of a plague, a war, and a famine. It is, therefore, not improbable that

[1] Liv. xlv. 15. This passage also is obscure and perhaps corrupt or defective. Cicero, *De Or.* i. 9, and Aurel. Victor, 57, differ from Livy in stating that the new citizens were on this occasion received into the four city tribes, thus ignoring the restriction to one. As Livy's account is more detailed, and no doubt drawn from an old annalist that lay before him when he wrote, it must be preferred to Cicero's, who evidently wrote from memory.

the above-named censors were rather liberal in the reception of new citizens. Nothing, however, is reported of the principles according to which they acted in this matter.[1]

The claim of the Italians to the franchise.

Up to the civil disturbances caused by the Gracchi, our sources remain silent on the subject of the conflicting opinions which no doubt continued to divide rival politicians as to the principles to be adopted on the reception of new citizens. A short time after the death of the younger Gracchus, in the year 115 B.C., a law was proposed by the consul Marcus Æmilius Scaurus, concerning the suffrage of the freedmen,[2] from which we can gather that as yet no decisive answer had been given to the question. Shortly afterwards the question of admitting new citizens to the Roman franchise, instead of being settled by the experience of successive censors, assumed a far more serious aspect by the claims preferred by the whole population of Italy to be raised to an equality with the original citizens of Rome, and to be included in the Roman tribes. The question was now too big to be decided by the censors, or by the senate. It became the cardinal point on which the whole problem of reforming, and thus saving, the republican institutions hinged. A terrible and disastrous war overcame at length the stubborn resistance of the conservative party, which vainly persisted in excluding the Italians from the full privileges of citizens. The history of this war, which is in reality only the last phase for the reform of the *comitia tributa*, will be related in the next volume.

Working of the Roman republican constitution.

If we survey the working of the Roman popular assemblies as a whole, we come to the conclusion that their influence could not be other than beneficial to a small state confined to a single city, for which they were intended. As soon, however, as the state spread beyond moderate bounds, as soon as public business became more important, complicated, and absorbing, it was no longer possible for the citizens who lived at a distance to take part regularly in the assemblies. The inevitable result was that the

[1] Liv. epit. 46. Plutarch, *Æm. Paull.* 38. [2] Aurel. Vict. 72.

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popular assemblies sank to mere formalities, and became a tool in the hands of the ruling class. This change besides being inevitable was also fortunate for Rome. The management of public affairs remained in the firm hands of those men who possessed the requisite knowledge and experience; and at the same time the sovereignty of the people, which continued to exist by law, formed a barrier against arbitrary encroachments on the part of the aristocracy. But it was this continued nominal sovereignty of the people which contained a latent danger for the government of the aristocracy and the continuance of the republic. If the popular assemblies should ever come to be applied, not in the service of the aristocracy, but in the interest of ambitious demagogues against the will and against the policy of the nobles, a conflict was sure to arise between formal right and existing usage, a conflict which would necessarily lead to a revolution, and to the remodelling of the forms of public law. This process fills up the period from the Gracchi till the time when the Roman state was established on a new foundation, when a single ruler as the representative of the whole population took the place of the sovereign assembly of the people. But up to this time the undisputed rule in Rome belonged to the senate, that body to which its development and glory are principally due.

The comitia and the contiones.

We should have a very mistaken and inadequate conception of the share taken by the people in the government of Rome, if we looked upon it as being limited to the formal decrees of the comitia by which laws (*leges* and *plebiscita*), elections [1] and administrative measures were resolved upon. The direct influence of the comitia must

[1] It is strange that the Romans had no technical term for 'election,' though it would have been easy to form a verbal substantive from the words *creare*, *facere*, or *eligere*, to be used for this purpose. This is an illustration of the poverty of the Latin language in the domain of public law, which is the cause of so much uncertainty and so many conjectures as to the precise meaning of *patres*, *populus*, *quæstor*, *lex*, *concilium*, and other terms. The wonderful fertility of the Greek language in this respect forms a marked contrast to the Latin.

have been of limited extent for this reason, that they were called upon merely to answer *yes* or *no* to questions formally laid before them. The people would have had no influence on the form in which these questions were put, had they not had a special organ for the purpose, an organ in some way corresponding to the public press of our day and the right of meeting and forming associations for political objects. Such associations were always regarded with distrust by the Romans, who suspected in them conspiracy and treason. Their place was taken by a kind of assemblies of the people, less formal than the comitia, called 'contiones,' in which no binding resolutions could be passed, but public questions could be freely discussed. It is true that even these 'contiones' were far from being altogether exempt from restricting formalities. They could not be called together by anybody except the magistrates, neither had every man the liberty of speaking in them, of making proposals or of declaring his opinion, but only the magistrates who had assembled them or those to whom the magistrates granted the permission to do so; but even in this limited manner public questions could be discussed and the people could be enlightened on the purport and the bearings of the questions laid before them for final decision in the comitia.

Increasing influence of the contiones.

The custom of discussing public questions in the 'contiones' became general after the comitia of tribes had obtained full legislative competency, and it was especially the tribunes of the people who made use of them. It was in the 'contiones' that the policy of the ruling aristocracy was explained and made palatable to the mass of the people, who were then persuaded that they gave their legislative decisions with perfect freedom and after due consideration. As long as perfect harmony prevailed in the ranks of the nobility, the 'contiones' were no obstacle to the undisturbed aristocratic government. But a change necessarily took place when this harmony was disturbed, when demagogues appeared and endeavoured to engage public opinion for their reformatory

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projects. The first attempts were successfully made, between the first and second Punic wars, by Caius Flaminius.[1] Soon after that time the common distress of the Hannibalic war drowned the voice of the public orators, and the success of the wars of conquest which followed down to the overthrow of Carthage prevented the growth of popular opposition to the traditional aristocratic rule. But when the Gracchi had once sounded the note of democratic opposition, it was found that the 'contiones' were a powerful instrument to work upon the people for good and for evil. It was now no longer possible to put out of sight the danger involved for the existing order of things in the fact that the mass of the people, who had so long allowed themselves to be guided by the will of others, possessed the constitutional right of controlling the state regardless of other powers, whenever the desire to do so should be roused in them by able leaders.

[1] Vol. ii. p. 126.

CHAPTER II.

THE SENATE.

Intermediate position of the senate.

According to the Roman theory of public law, the people and the magistrates shared between them the power of the state. The people were the source from which the magistrates derived their authority. In strict law these two component parts of the commonwealth were in themselves sufficient to discharge all public duties and required no aid or direction from any third power. Nevertheless, it had appeared desirable from the very beginning to support the magistrates and the people in two directions—firstly, by bringing the action of the people as well as of the magistrates into harmony with the will of the gods; and, secondly, by giving due influence to the collective experience and wisdom of a body of men placed between the magistrates on the one side and the people on the other. Whilst the Roman law never suffered the representatives of religion to hold an independent position in which they might oppose the will of the state or exercise a controlling influence upon political life, like the Church in Christian communities, the Roman senate or council of elders gradually became a power in the state which, without possessing the formal right of government, obtained the actual direction of public affairs and made both magistrates and people subservient to its will.

Causes tending to increase the power of the senate.

The natural consequence of the growth of the republic in power and extent was that the influence of the senate also was extended and increased. The division of the supreme executive authority first among two, then among a greater number of magistrates; the short duration of their time of office and the frequent changes of the ad-

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ministration resulting therefrom; the multiplicity of the three kinds of popular assemblies, the comitia of curies, of centuries, and of tribes; but above all the rise and development of the power of the tribunes, who were specially destined for opposition and control, made it absolutely necessary to have a constitutional organ in which the many threads of public life could be joined as it were in one knot, and prevented from falling asunder or becoming entangled. This organ was supplied by the senate, which in course of time attained to a degree of excellence unequalled in any other nation of antiquity, and which contributed more than any other part of the Roman constitution to raise the state to its high and powerful position. The senate was in truth the soul of the Roman body politic;[1] and at all times the fortunes of the community depended upon the healthy condition and the civic virtues and wisdom possessed by this assembly. An intimate acquaintance with the composition and functions of the senate is therefore necessary if we would understand the history of the Roman people.

Informal authority of the senate.

The senate was originally in the state exactly what a family council was to the head of a household, and what a council of war was in the field—namely, an assembly, not to control or restrain, but to assist by its advice the person who called it together. There was no absolute necessity for the political magistrates to consult such a council, any more than such a necessity was laid on the father of a family or the chief of an army. But it was contrary to the general custom, and it was looked upon as a mark of arbitrary dealing, when such a council was not

[1] Cicero calls it (*De Harusp. resp.* 27) 'principem salutis mentisque publicæ.' The same writer says (*Pro Sest.* 65): Senatum rei publicæ custodem, præsidem, propugnatorem collocaverunt [maiores]; huius ordinis auctoritate uti magistratus et quasi ministros gravissimi consilii esse voluerunt; senatum autem ipsum proximorum ordinum splendore confirmari, plebis libertatem et commoda tueri atque augere voluerunt. *De Orat.* i. 52: Cui [senatui] populus ipse moderandi et regendi sui potestatem quasi quasdam habenas tradidisset. The senate-house Cicero calls (*Pro Mil.* 33): Templum sanctitatis, caput urbis, aram sociorum, portum omnium gentium. *Cf.* Cic. *Pro Dom.* 28; Dionys. vi. 66.

consulted, or when its voice was disregarded. The weight of responsibility naturally rested more heavily upon the public official if he took it entirely upon his own shoulders instead of distributing it over a greater number. Hence we see that with the annual changes of magistrates established by the republic, and the responsibility which was now imposed upon them, the influence of the senate necessarily increased and continued to increase. The kings of the pre-republican period, being appointed for life, might consult the council of elders according to their will and inclination, and could accept or disregard their council's advice; but the republican magistrate after the expiration of his year of office became a simple citizen confronted by a body of his equals, who were evidently not inclined to allow any one of their number to hold arbitrary sway, and who possessed the means of chastising him for any abuse of power. The senate contained the sum total of political experience and personal authority, which distinguished from the mass of the people men eminent by birth or wealth. It was a body which was always being renewed, so that it appeared to remain ever young and immortal, like the nation itself. An uninterrupted tradition of political doctrines and principles, continually increased and enriched by new experience, naturally gained for this body the authority of an authentic source of legal lore at a time when there were no books or easily accessible records of constitutional law and of the rules of practice. Thus all circumstances combined to confer upon the senate the management of public affairs, and to make it, in spite of the absence of formal right, the actual ruler of the state.[1]

Political services of the senate.

Though the power of the senate began to grow with the establishment of the republic, yet the full development of this power dates from the time when the Roman dominion extended beyond Latium to the whole of Italy,

[1] The Cabinet Council or Ministry of the modern constitutional monarchy holds an analogous position. Though, as such, unknown to the law, and nominally only entrusted with the privilege of advising the Crown, it carries on the actual government and is primarily responsible for it.

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and to territories across the sea. In the older time, before the great increase of the Roman dominion took place, the difference was not very considerable between a simple citizen and a member of the council. The questions of internal policy and the relations with immediate neighbours were not then of a complicated nature. Upon a proposal of the magistrates, the citizens could easily decide whether a truce was to be concluded with Tarquinii, whether a war was to be undertaken against the Æqui, or a colony to be sent to Labici. But when in the time of the Samnite wars the political relations of Rome extended to the whole of central Italy; when the Greek towns on the Tarentine gulf, when the foreign powers in Greece and Sicily, when at length Carthage and the distant east and west were drawn within the range of Roman politics; when the state conquered provinces, and entered into alliances with foreign potentates, like king Hiero of Syracuse; when Rome through her political power acquired untold riches, and, in her position as the leading state of the ancient world, was obliged to deal with questions which could not be decided by the *Yes* or *No* of the sovereign population of the city, then it was the senate which alone proved equal to the task, and through which it became possible to adapt, however imperfectly, the ancient town constitution of Rome to entirely new circumstances. It was not the efficiency of the magistrates nor the perseverance of the people, but the wisdom of the senate, which, in conjunction with the military organisation and the bravery of the Roman legions, created the Roman empire. In this great process of the world's history, the people and the magistrates were but tools—and often very imperfect tools—in the hands of the genius of Rome represented by the senate.

The senate and the magistrates.

The active part which the senate took in the government, and which it played with almost unlimited freedom of will, was, therefore, at bottom a usurpation, but one that was forced upon it by the development of the Roman state, and which was justified, not only by the re-

sult, but by the ready consent of the people thus governed. It is true that no resolution of the senate was in law binding on magistrates and people. The magistrates could always carry their point in spite of the will of the senate, if they were not afraid of being called to account after the expiration of their year of office; the people could always adopt a resolution and prescribe a course of action on any question which the magistrates thought proper to withdraw from the decision of the senate and to place before a popular assembly; but such cases always remained exceptional, and hardly interfered with the general rule that all government measures, except those which referred only to common routine matters, should be in the hands of the great council.

Functions of the senate.

It is not our task here to analyse in detail the functions of the senate in every department of public business. This task would belong properly to a separate treatise on constitutional law. In this general history we must confine ourselves to so much as will suffice to render the position of the senate in the constitution of the Roman republic clear and comprehensible, and to ascertain its share in the historical development of the empire.

Ancient and modern finance.

Among those departments of the administration which differed most from modern practice was the department of finance. In constitutions of the present day the principal and most important privilege of the people is the right of granting or refusing to the executive the taxes necessary for carrying on the government. Upon this foundation the liberty of Englishmen is based, as well as every constitution formed after the model of that of England. But to understand the full importance of the political right of granting supplies, we must bear in mind that money plays an infinitely greater part in modern states than in the states of antiquity. The public finances have become the first care of modern statesmen, the principal condition for the healthy working of all other branches of political life. The modern state has undertaken to provide for a great number of social interests

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which the Romans left to themselves. It superintends education, commerce, traffic; it cares for the public health; it directs even public charity, and watches over the security of persons and property, in a manner far more comprehensive and effective than seemed possible to the Romans; and in every department of the public service modern governments require money to pay the officials, and to find the means for carrying on the administration. The Roman republic had existed for a long time before it was even thought necessary to offer a compensation to the citizens for their military service, the hardest service of all.[1] But at no time did the public officials receive regular pay, and the expenses of the state were limited to extraordinary requirements. In addition to this, war, which in our days has always been to the state a source of financial embarrassment, was considered at Rome the means of covering its own expense, for the war booty furnished a compensation for the sacrifices made by the state and by each individual citizen-soldier; and, like the fines paid by common offenders, the booty flowed into the public treasury, and was used for public purposes. Hence it is explained that the Roman people left the management of their finances, the imposition and application of extraordinary taxes,[2] and the disposal of the public domains of the state, entirely to the government, and apprehended no danger to their liberty from their exclusion from the control of the financial administration. The question never seems to have been submitted to the people, whether a war-tax should be levied, and what amount it should reach; how public lands were to be let or granted for the use of private individuals; according to what principles monopolies (for instance, of salt), import dues and other public revenues were to be employed for the benefit of the state; or in what manner the fines payable for pub-

[1] Vol. i. p. 243.

[2] Liv. xxiii. 31, 1: Senatus, quo die primum est in Capitolio consultus, decrevit ut eo anno duplex tributum imperaretur, simplex confestim exigeretur, ex quo stipendium præsens omnibus militibus daretur, præterquam qui milites ad Cannas fuissent.

lic offences should be applied. With the exception of a single law, imposing a payment of five per cent. on the price of liberated slaves,[1] no law is known to have been passed for establishing regular taxes. How easy would it have been, according to our notions, for a demagogue to accuse the government before the people of unjustly levying, or dishonestly applying, taxes or other sources of income! Yet among the numerous disputes about political rights not a trace is to be found of a popular party having endeavoured to gain the control of public revenues and expenses; and this may be looked upon as a proof that, with regard to the management of financial affairs, the habits of the Romans must in principle have been entirely different from ours.

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Hence we would gladly draw the conclusion that the honesty and conscientiousness of the members of the Roman senate justified the confidence which to all appearance the people placed in them. But, if we remember how recklessly at a later period of the republic the men of the nobility dealt in the provinces with the moneys and other trusts confided to them, how little they shrank from peculation, theft, exaction, nay, even force and open spoliation; if in the good old times we see men like Curius and Fabricius praised to the skies for their abstinence and integrity, as exceptionally virtuous; if even the honourable Camillus was accused of unjust appropriation of booty, we can scarcely admit the supposition that the free disposal by the senate of the public funds was based on an extraordinary amount of confidence on the part of the people, or that its consequence was the faithful administration of the state finances. If we examine, for instance, one single but important department, the dealings with public lands, the occupation of which was not regulated by fixed laws, but depended

Administration of the revenue by the nobles.

[1] This was the *lex de vicesima manumissionum*, passed (357 B.C.) in a way contrary to all precedent by the army in the field. A special law was passed on the occasion to guard against the repetition of the practice. See Livy, vii. 16, and above, p. 33, note 1.

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on the will and favour of the government, and which in consequence of the neglected payment of tithes led to the conversion of public into private property, we cannot help wondering that the management of the revenue was left so exclusively to the nobility.

The senate and the treasury.

The financial prerogative of the senate is expressed by Polybius in short and rather vague terms to consist in the right of disposing of all the revenue and expenditure.[1] The quæstors, who had the care of the treasury, were not allowed to issue from it any money without a senatorial decree to any magistrate, with the sole exception of the consuls.[2]

Public works.

The greatest and most important public expenditure was, according to Polybius, that on public works which the censors superintended under the direction of the senate.[3] We are nowadays accustomed to see all the other expenditure of modern states so much surpassed by that of the war department that such a statement as that of Polybius would almost appear incredible. But surely Polybius must have had in mind merely the peace budget, which, indeed, was small in Rome, as standing armies were not yet known, and as the ships of the fleet were allowed to rot in times of peace.[4] On the other hand, the public edifices of the Romans were executed on a scale which modern states, even in our own century, have hardly surpassed. The magnificent roads, aqueducts, canals and drains, bridges, harbours, markets, halls, and

[1] Polyb. vi. 13: *ἡ σύγκλητος τῆς εἰσόδου πάσης κρατεῖ καὶ τῆς ἐξόδου παραπλησίως.*

[2] See more on this subject below, chap. vii.

[3] Polyb. vi. 13, 3: *τῆς δὲ παρὰ πολὺ τῶν ἄλλων ὁλοσχερεστάτης καὶ μεγίστης δαπάνης, ἣν οἱ τιμηταὶ ποιοῦσιν εἰς τὰς ἐπισκευὰς τῶν δημοσίων κατὰ πενταετηρίδα ταύτης ἡ σύγκλητός ἐστι κυρία.*

[4] The systematic neglect of the fleet in times of peace came to light whenever a new war broke out. It was no doubt an inevitable consequence of a system of national defence such as that of republican Rome, which had the character of an annual provision for annual wants. It seems hardly in the nature of republican institutions to incur expense and trouble for the purpose of providing future successors in office with the means of meeting newly risen difficulties.

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temples required an enormous expenditure, and served to employ large numbers of the population. Their construction took, to a certain extent, the place of national workshops,[1] and if we consider in addition to this the profit which was drawn from the state by the collectors of the public revenue and their numerous staff of inspectors, clerks, and other servants, we can understand what Polybius means when he says that the people were dependent upon the senate.[2] This dependence was not directly political, it was economical; but, as we see from Polybius, it had a great influence upon politics. The care for their material welfare, which is what the great mass of the population in every country have most at heart, was made use of to increase the preponderating influence of the nobility. We shall frequently have occasion to observe this direct bearing of private interests upon the public business of the state. The fact is that all ancient states, but especially that of the Romans, were imbued with socialistic ideas, which manifested themselves in a variety of ways—above all, in the prevailing conviction that it was the business of the state to secure the well-being of the citizens, not only indirectly by protecting their rights and liberty, but directly by the distribution of land and bread, by occasional remission of debts, and other state interference, so that the dependence of tradespeople and working classes upon the managers of the public property, which now is justly looked upon with suspicion, and restricted within the narrowest possible limits, or carefully controlled by the organs of public opinion, was in Rome held to be perfectly justifiable.

[1] A modern comparison is suggested by the notorious 'ateliers nationaux,' with which France was deluded for a short time in 1848 by the Socialists under the guidance of the incurable monomaniac Louis Blanc.

[2] Polyb. vi. 17: *ὁμοίως γε μὴν πάλιν ὁ δῆμος ὑπόχρεώς ἐστι τῇ συγκλήτῳ καὶ στοχάζεσθαι ταύτης ὀφείλει καὶ κοινῇ καὶ κατ' ἰδίαν. Πολλῶν γὰρ ἔργων ὄντων, ἐκδιδομένων ὑπὸ τῶν τιμητῶν διὰ πάσης Ἰταλίας . . . . πολλῶν δὲ ποταμῶν, λιμένων, κηπίων, χώρας . . . . πάντα χειρίζεσθαι συμβαίνει τὰ προειρημένα διὰ τοῦ πλήθους καὶ σχεδόν, ὡς ἔπος εἰπεῖν, πάντας ἐνδεδέσθαι ταῖς ὠναῖς καὶ ταῖς ἐργασίαις ταῖς ἐκ τούτων, κ.τ.λ.*

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The senate and foreign affairs.

If the administration of financial affairs was left in the hands of the senate simply because such was the order of republican constitutions in Italy as well as in Greece, the conduct of foreign affairs, on the other hand, was confided to the senate, because Rome had not like Athens a *demos* which discussed the policy of the state publicly in the market-place. The Roman government was conducted by a well-organized aristocracy. In all communications with foreign states, the senate represented the Roman people. The official designation "SENATUS POPULUSQUE ROMANUS" sufficiently indicates that in the first place the senate was or represented Rome. It is not necessary here to show in detail what is exhibited in every page of Roman history, and what is especially clear in the events of the wars in Greece and Asia—namely, that the senate had to discharge the duties which, in a modern state belong to the Ministry of Foreign Affairs. We have seen how all negotiations with other countries were carried on through the senate in a manner which makes us almost forget that there was such a thing as a sovereign people, and, moreover, as if the magistrates had to perform but the one duty of carrying out the instructions of the senate. It is true, instances of insubordination occur from time to time. Magistrates sometimes endeavoured to have a will of their own, and to act without or even contrary to instructions; but in not one of these instances did they maintain the upper hand when they found themselves opposed by the senate. The proudest and most stubborn magistrate, either by compromise or by simple submission, invariably yielded at length to the authority of the senate, and even a Scipio could not go beyond the threat of appealing from the senate to the decision of the sovereign people. In the period of the great wars for the dominion of the world, the conviction was universal in Rome that the senate alone was qualified to guide the Roman policy, to survey the whole field of operations, and to apply the hereditary principles tried by previous ages, which had always led to final victory and to the extension of the

Roman dominion. Perhaps the words attributed to Cineas, that the senate appeared to him an assembly of kings,[1] are nothing but a rhetorical phrase; yet they correctly represent the impression which foreign ambassadors, and through them foreign nations, received when they were brought into contact with this august assembly which with such consummate wisdom and unflinching firmness wielded the force of the irresistible legions. An individual consul might err, he might make himself detestable or despicable by weakness or cupidity, but the Roman senate appeared inaccessible to temptation and exempt from errors when the interests of the republic were at stake. The oppressed nations appealed again and again from the generals to the senate, and rarely appealed in vain. At a time when corruption had so taken root among the Roman nobility that nothing but avarice, luxury and ambition ruled the hearts of most public men, even then the senate preserved enough virtue either from shame or from national feeling to condemn those men who by their vices disgraced the Roman name.

Military administration.

It was natural that the management of foreign affairs should be closely connected with the organization of the armies of the republic, and the disposal of them for warlike purposes. In this department, important decisions could be left neither to the people nor to the individual magistrates. The people were utterly devoid of the necessary information and judgment; with the officials personal motives and interests might and often did counteract those of the state. The senate alone possessed the requisite knowledge of all that was wanted, and was as a body free from paltry personal considerations. It was therefore qualified to keep in view the public good, and to maintain a consistent line of action in the perpetual change and variety of annual magistrates. It was the senate, therefore, that regularly appointed the tasks and duties of the magistrates; the senate determined what forces were to be placed at the disposal of each com-

[1] Vol. i. p. 520.

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mander, and what provision should be made for the equipment of the troops; it watched over the execution of these orders, and if necessary even sent out special delegates or received direct reports of the course of events. The senate determined whether it was necessary to prolong military commands beyond the year of office, and this right in conjunction with that of appointing a dictator was perhaps the most essential part of the power which it exercised over the military officers, for thus the appointment of generals was practically placed in its hands. Nay, the senate sometimes so far exceeded its lawful authority as to recall generals, and to require them to lay down their command before the expiration of their period of office.[1]

Foreign diplomacy.

The power of the Roman senate appeared most magnificent after a victory, when conditions of peace were to be prescribed, or the degree of dependence to be fixed in which the conquered people were to stand with regard to the Roman republic. Then the senate-house was thronged with ambassadors from foreign states, from allies, from vassal potentates, from anxious neutrals, all charged with requests, prayers, congratulations and flatteries: everything was done to obtain the favour of the mighty body which awarded liberty or servitude, and gave away towns and kingdoms at pleasure. This was also the time in which the republican virtue of the senators had to undergo its hardest trial, a time which caused true patriots to be anxious and alarmed. Whose virtue, indeed, could be expected to be proof, or whose head free from giddiness, when he saw an Asiatic king behave with the abject servility of a Roman freedman; when he heard how nations and princes were willing to purchase the intercession of an influential man with heaps of gold? The council of a single town beheld itself exalted to the position of an all-powerful arbitrator of the destinies of half the world. Was there not in this plenitude of

[1] Liv. epit. 11. Zonar. viii. 1. Dio Cass. *Fragm.* xxxvi. 30. Liv. xliii. 1. See vol. iii. p. 225. Lange, *Röm. Alterth.* ii. 404.

power a great danger to the established order of things; to the customs inherited from previous generations; to the ancient rustic simplicity and martial severity; to contentedness and abstinence; in short, to social equality and republican liberty? To be just, we ought to confess that there is nothing to surprise us in the fact that the Roman nobility succumbed to the temptation. It was rather creditable to them that they resisted it so long.

Aggrandisement of the senate.

The senate had risen to this height as early as the first period of the republic. It exercised the sovereignty which had been conferred upon Rome by the subjection or voluntary alliance of various towns and districts of Italy.[1] It is true that those subjects who under the honourable title of Roman allies recognised the Roman authority were independent with regard to their internal affairs, and free from tribute as well as from the control of Roman officials. But no right or privilege could be made good against the all-powerful ruler if it happened to be opposed to the interests of Rome; in short, the senate interfered in the internal affairs of the Italian communities whenever and in whatever manner it chose.[2] It ordered investigations and judicial inquiries, sent commissions and officers, issued regulations, general or special, without inquiring whether it was strictly entitled by treaty to do so.[3] In its capacity of highest financial board, it superintended the management of the state-domains scattered all over Italy and the provinces, and the execution of

[1] Liv. ix. 20, 10: Antiatibus quoque . . . . dati ab senatu ad iura statuenda ipsius coloniæ patroni. Cicero, *Verr.* ii. 50, 123. After the great Latin war the political status of the several Latin towns was regulated by decrees of the senate. Liv. viii. 14, 2: Relatum de singulis decretumque. *Ib.* c. 20, 7: Senatus de Vitruvio Privernatibusque consultus consulem Plautium, dirutis Priverni muris præsidioque valido imposito, ad triumphum accersit . . . . de senatu Privernate ita decretum, etc. Comp. Lange, *Röm. Alterth.* ii. 406. The authority of the senate in purely military matters is expressly recognised in the *Plebiscitum de Thermensibus*, lin. 45, where that town receives exemption from having soldiers quartered in it, 'nisi senatus nominatim decreverit.' The same is proved in numerous other places. Comp. Liv. xxxi. 3, 2.

[2] Liv. xxix. 15, xl. 42, xli. 27. For more detail see below, chap. ix.

[3] Liv. ix. 26, x. 1, xxviii. 10, xxix. 36, xxxii. 26, xxxiii. 36, xxxix. 3.

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public works; in its capacity of supreme council of war it fixed the contingent and the number of ships which each ally was to contribute to the common army. Thus it is natural that the Italians who were not included within the line of Roman citizenship should see in the senate, not their patron and counseller, but their master.

The senate and the provinces.

This was the case in a still higher degree with regard to the provinces, although in these the pro-consul or pro-prætor, as the representative of the Roman government, took a more prominent position. All general measures regarding the establishment and administration of provinces, especially those which had reference to the collection of the revenue, were made by the senate, and to this body the governors of provinces were responsible for their administration. If the provincials had any complaints to make, they laid them before the senate, which, as the case might seem to require, either appointed commissions of inquiry, or caused the tribunes to act as public prosecutors, and organized extraordinary law-courts to decide the suits.[1] In spite of all the means at its disposal, it could not stop the misgovernment, violence, cupidity and rapacity of the officials. This was not owing to a want of will, but it was an outflow of that fundamental error in the Roman constitution by which a single town and a close nobility were the absolute rulers of a mighty empire.

Judicial power of the senators.

Although the senate as such was not legally entitled to act as a court of law, until the time of the emperors, its authority was nevertheless based principally upon the circumstance that every Roman saw in the individual senators the men who might possibly hold in their hands the disposal of his entire property. For it was out of the senate that the judges were chosen who decided the suits brought before the prætors. To this dependence of the people upon the senate, or rather upon the individual senators as judges, Polybius points as to the chief source

[1] Liv. xxxi. 12, xliii. 8: Accersere in senatum Lucretium placuit. Comp. vol. iii. p. 220. Liv. xlii. 21. Comp. vol. iii. p. 202. Liv. xliii. 2. Comp. vol. iii. p. 378.

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of the power of that body,[1] just as he lays great weight upon the economical dependence of the mass of the people upon the senate.[2] These influences were not contemplated by the constitution of the republic. They were, strictly speaking, illegal, and an abuse of the power entrusted to the governing body. But the fact is by no means surprising. It has always been found a most difficult task to prevent the tampering with the administration of justice for private and political ends. Even in modern times the fair administration of justice between man and man independent of all side influences has not been universally established. No wonder that the republican states of antiquity were very far indeed from realising it. They could hardly contemplate the possibility of excluding private and political considerations from legal decisions, and they were content with endeavouring to balance one undue influence by another. Thus we can understand that even the noble and wise Polybius without hesitation points to the influence of the senators in the administration of justice as an essential bulwark of their political power, without suspecting that he thereby to a certain extent excuses a shameful abuse.

Senatorial law-courts.

Thus, then, by being regularly employed as judges in private suits, the senators enjoyed an indirect but powerful influence. This influence was essentially increased by the circumstance that the senate as supreme administrative council had the right of appointing extraordinary criminal tribunals on extraordinary emergencies. The appointment of these tribunals was, strictly speaking, a limitation of popular jurisdiction, or a transfer of it from the comitia to a select number of judges or jurymen. In strict law, therefore, a formal decree of the people was necessary in order to constitute such a special court of justice.[3]

[1] Polyb. vi. 17, 5: *τὸ δὲ μέγιστον, ἐκ ταύτης [τῆς συγκλήτου] ἀποδίδονται κριταὶ τῶν πλείστων καὶ τῶν δημοσίων καὶ τῶν ἰδιωτικῶν συναλλαγμάτων, ὅσα μέγεθος ἔχει τῶν ἐγκλημάτων. Διὸ πάντες εἰς τὴν ταύτης πίστιν ἐνδεδεμένοι, καὶ δεδιότης τὸ τῆς χρείας ἄδηλον εὐλαβῶς ἔχουσι πρὸς τὰς ἐνστάσεις καὶ τὰς ἀντιπράξεις τῶν τῆς συγκλήτου βουλευμάτων.*

[2] See above, p. 51.

[3] See Lange, *Röm. Alterth.* ii. 413.

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But it appears that in most cases the co-operation of the comitia was dispensed with as a mere formality, and thus a penal procedure was created which, added to and partly superseding the jurisdiction exercised by the whole assembled people, indicates a progress in the administration of law, inasmuch as it contributed to limit, and finally to abolish, the wild and irregular justice[1] of an excitable populace. The senate had authority to decide whether the nature of a crime was dangerous to the state, and whether a special course of proceeding was necessary. If highway robbery or poisoning increased to an alarming extent so as to occasion a universal feeling of insecurity; if superstition, under the cover of religious practices, urged people to immorality and misdeeds (as was the case in the Bacchanalia, which will be discussed further down), the senate stepped in and interfered to save society by means of extraordinary investigations and punishments.

The senate and the knights.

This control of public jurisdiction by the senate was most important in its relation to independent states and allies and formed a part of the right of government which the senate exercised over them. The law-courts established 149 B.C. for the purpose of punishing extortion (*quæstiones repetundarum*) owed their origin to this supreme care of the senate for the welfare of the people. The privilege or duty of serving as judges in these courts was reserved for the senators, but was afterwards taken from them to be given to the knights. It became the object of hot contention between the two classes, a contention which marked the whole period from the Gracchi to the end of the republic, and was carried on without the slightest prospect of a satisfactory settlement.

The senate and religion.

The chief control of the administration of justice was closely connected with the care for public worship and the religion of the state. The latter was in the full sense

[1] Popular jurisdiction—*i.e.* the trial of offences by the mass of the people—does not admit of a strictly legal and impartial procedure. The people as a body are always swayed by feelings, prejudice and party spirit, and often guided in their judgment by side issues, irrelevant as to the guilt or innocence of the accused.

of the word a part of the public law. In the conviction of the Roman people the prosperity of the state depended no less upon the purity and careful observance of religion than upon the due administration of justice; nay, the protection of the national gods was thought to be as much required for the security of the state as the force of the Roman arms.

Religion and the state.

This political importance of public worship is explained by the intimate union of state and religion, and more particularly by the practical subordination of the latter to the former. An independent or even hostile position of religion with regard to the state was beyond the limits of possibility. As the religion of Rome was not the religion of all mankind, but that of the one state, thus also the servants of religion were the servants of this state, and the superintendence of religion belonged by right to the senate, the supreme national council. The priests, as the servants of the gods, were but the interpreters of divine law. The public magistrate appealed to them for their opinion on religious matters. But the final decision of every religious question lay, undoubtedly, in the hands of the political power. Hence the numerous senatorial decrees concerning religious matters: for instance, the introduction of foreign forms of worship[1] and festivals,[2] the prohibition of foreign oracles,[3] the expulsion of foreign prophets[4] like the Chaldæan priests,[5] the destruction of the alleged religious books of Numa,[6] but above all the famous *senatus consultum* on the Bacchanalian festivals.[7] It almost appears strange, but it is quite in accordance with the political views of the Romans, that these matters should be referred to a political authority, and not to the priestly assemblies of augurs or pontifices, of whom the latter especially had the duty of watching over the due performance of religious ceremonies. It is here plainly

[1] Liv. iv. 39, xxxix. 16.
[2] Liv. xxv. 12.
[3] Valer. Max. i. 3, 1.
[4] Liv. xxv. 1.
[5] Valer. Max. i. 3, 12.
[6] Liv. xl. 29. Comp. Lange, *Röm. Alterth.* ii. 230.
[7] Liv. xxxix. 8-19. See below, chap. xiii.

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shown that the religious bodies were not capable of acting independently, and were called together only to support the political magistrates with their advice. The uninterrupted concord and perfect agreement between the religion and the state was, moreover, facilitated by the circumstance that there never existed a distinct class or caste of priests, and that the highest priestly offices were held by the same men who as magistrates or senators conducted the public business of the state.

Legislative influence of the senate.

We have seen that the senate in all departments of public life possessed the leading, controlling and determining authority, carrying on the government properly speaking; whilst the magistrates had to attend to the administration—*i.e.* the ordinary executive business, in which they were bound to carry out the established laws and the instructions given to them by the senate. This supreme control the senate had obtained, as we have seen, without having been entitled at first to do more than to give advice in those cases in which the magistrates thought proper to ask for it. It was not natural that the senate should exercise such a preponderating influence over the government without having a corresponding share in the legislation. The senate, which was the soul of the executive power, could not possibly look on indifferently whilst the Roman people, as legislators, laid down the lines destined to regulate the action of the officers of the republic and of private citizens. We cannot, therefore, be surprised that in this department of legislation the same phenomenon is repeated which we have witnessed in the administration of the state—namely, that the senate exercised a marked influence upon the legislation without being directly entrusted with legislative functions by the constitution.

Initiative powers of the senate.

If a legislator of the modern school had drawn up the Roman constitution, he would, undoubtedly, have inserted a paragraph to this effect, that no law should be submitted to the people for their approval unless it had previously been discussed and recommended by the senate; or, at

any rate, that no popular decree should have the force of law without the sanction of the senate. The Romans could dispense with such a fundamental law, because it was in the nature of things that the senate as the sole consulting and debating body, as the supreme council of state and controlling board of the government, should have in its hand the preliminary discussion and planning of laws, and thus, in point of fact, the control of the entire legislation.[1] Thus by habit a constitutional practice was formed which for centuries was kept just as sacred as if it had been sworn to as a fundamental law. It was not until the year 232 B.C. that a statesman, in the interest of progress and for the benefit of the people, frustrated the opposition of the senate by overruling it and maintaining the right of the people to pass valid laws even without the preliminary deliberation and approval of the senate. It was the notorious and severely-censured measure of Caius Flaminius, for the distribution of land in the district of Picenum, that gave rise to this innovation, an innovation from which Polybius dates the turn of Roman politics for the worse.[2] As we shall see, the policy of Flaminius remained for a long time a solitary instance of democratic innovations, and the path which he had opened was not again trodden until the time of the Gracchi, when the senate by its obstinate resistance to reforms afforded to the popular leaders a pretext for violent changes in the constitution.

The senate had less influence by formal decrees upon

[1] The so-called *patrum auctoritas*, which in the first period of the republic down to the Publilian law, 339 B.C. (see vol. i. p. 370), was required for every vote of the centuriate comitia to give it the force of law, was, in fact, such a constitutional prerogative of the senate, though, properly speaking, it did not belong to the senate as such, but to the members of the senate as patricians. When the senate had become a mixed body, consisting of patricians and plebeians, it was natural that the *patrum auctoritas* should be given to popular votes upon resolutions of the *whole* senate. Thus the senate did practically enjoy the constitutional right of controlling the votes of the comitia until the Publilian law. See the author's paper on the comitia tributa in *Rhein. Museum*, 1873, p. 357; Mommsen, *Forschungen*, i. p. 233 ff.

[2] See above, p. 27.

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The senate and the elections to public offices.

the elections than upon legislation. The elections had from a very early period been quite free—that is to say, not limited to a list of candidates drawn up by the senate or any other constituted authority. Besides, there was no lack of disputes and personal enmities among the members of the nobility, which occasioned frequent rivalry between those who aspired to public offices. But up to the time of the Gracchi this rivalry was in most cases personal. No conflict between adherents of the old institutions and radical reformers was as yet thought of. The ruling nobles, therefore, could usually agree without difficulty on the claims of the various aristocratic families and the distribution of offices among them, and a list of candidates approved by the senate ran little risk of being rejected by the people. It is not probable that formal consultations were held in the senate concerning such personal questions, still less that resolutions were made; nor was this necessary to obtain a practical understanding in an assembly comparatively so small as the senate. It was, on the whole, rare that candidates opposed to one another carried their enmity so far that to decide their pretensions an appeal to the people in the elective comitia became necessary.[1] Such cases occur more frequently only towards the end of the present period, when, after the victory of Zama, the internal unity of the Roman nobility became gradually weaker, when personal ambition gained ground, and the posts of honour usually afforded more opportunities for acquiring wealth. Yet to what extent the senate even then controlled the elections can be seen most distinctly by the appointments to the tribuneship of the people. This office had been originally created to keep in check the patricians who at that time ruled the state. It had, therefore, more than any other public office the character of a regular and constitutional opposition. But from the time that patricians and plebeians had obtained equal rights, the office of tribune was completely changed in its nature, so that it was now the principal

[1] See below, chap. xiv.

instrument with which the senate, as the solid centre of the Roman constitution, held together the centrifugal forces swayed by a great number of annual magistrates.[1] It is a striking fact that during the entire rule of the nobility, down to the time of the Gracchi, no tribunes were elected who were in principle opposed to the government. This uniform firmness with which the nobility controlled the elections can be explained only by the circumstance that the indirect influence of the senate in them was irresistible.

General importance and character of the Roman senate.

Summing up the totality of the action of the Roman senate, we can truly affirm that no political body of equal importance is to be found in the whole range of the ancient world. Unfortunately, we know too little of the Carthaginian senate to compare it with that of Rome. But as the Carthaginian state broke down at the time when Rome was but beginning to advance with rapid strides to dominion over all the Mediterranean countries, its leading council cannot claim superiority over that of Rome. If we compare the deliberative councils which were intended to embody the political intellect in the various Greek states, we find an immeasurable contrast to the Roman senate, a contrast which by itself alone suffices to establish the superiority of the Roman constitution over that of every republic of Greece. Of all Greek states Syracuse perhaps possessed the most favourable geographical conditions for the formation of a powerful dominion. The fertile island of Sicily, situated in the middle of the Mediterranean, would have been far better suited than the narrow limits of Latium for the centre of an empire over the Græco-Italian, Phœnician, and barbarian countries. Syracuse far exceeded Rome in material resources when it in vain sought to obtain possession of the whole of Sicily, and when Rome established her dominion over Latium. It was not intellectual superiority nor even warlike valour that raised Rome above Syracuse. The superiority of the former lay in the organization and political

[1] See below, chap. viii.

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wisdom of the Roman senate, compared with which the leaders of the state at Syracuse were for the most part adventurers, zealots, and passionate wranglers. The case was similar with regard to Athens. Circumstances, it is true, were far more unfavourable to Athens than to Syracuse. The sterile soil of diminutive Attica was a basis too narrow and weak for the building up of an empire; but the decay of the powerful confederation at the head of which Athens stood between the Persian and Peloponnesian wars was caused principally by the fact that the Athenian council was distinguished by political incapacity, and that the guidance of the state was in the hands of an incompetent multitude, and of leaders thrown up by accident. An Athenian senate organized like that of Rome would have been able to unite even the most stubborn communities of Greece into one permanent league, in which each could have felt secure as a self-governing member of a large and powerful confederate state.

The Roman senate the chief cause of Roman greatness.

Turning from the ancient world to the modern, we find that only the great Council of Venice and the English Parliament can stand a comparison with the Roman senate, in as far, of course, as we look, not upon the form, but upon the spirit and ability of the assemblies, and the share which they severally had in building up the greatness of their respective states. If other nations have been indebted to other agents for their position in the history of the world—Athens, for instance, to the demos; Macedonia, to her kings—Rome owes her internal organization and her commanding position above all to the wisdom and firmness of the senate. This wisdom and firmness will appear no surprising phenomenon if we consider that in the senate the sound intellect of a highly-gifted and strong-willed people reached its highest development and perfection. In all political organizations the material forces and the national character are the primary conditions of success; the outward forms of a constitution, though of great importance, are only a secondary matter, and they adapt themselves naturally

and easily to the wants and necessities of a nation. The Roman senate in any other possible form would still have been the organ by which the political genius of the Roman people could manifest itself. Nevertheless, the form is not a matter of indifference; it reacts upon the substance—it can support, sustain, advance, or keep back national life in proportion as it is more or less adapted to the nature of things. The Roman senate was a political organism of the highest perfection, such as no other state in antiquity ever created or was qualified to create. Just as the Roman people, diversified by classes, age, rank, and residence of its component parts, was made by its subdivisions a more complicated and more perfect organism than a Greek 'ecclesia,' which voted by heads alone, so the Roman senate, by the selection and classification of its members and by its rules of debate, displayed a political wisdom which, as far as we know, was not reached by any national council in the ancient world, and which makes it worthy to rank by the side of modern parliaments.

Composition of the senate.

Every senate is by its nature an aristocratic element in the state. The most extravagant democracy cannot entirely deprive it of this character. Even if the line of distinction between the senatorial order and the mass of the people is ever so faint, if all special qualifications are set aside, and if annual elections deprive a senate of its most essential characteristics, pure democracy will still look with suspicion upon such a distinct and eminent body, and will attempt to lower its power by transferring its functions directly to the people, thus trying to make it a sham, and, like tyrants who govern without any controlling council, to sacrifice liberty and the authority of laws to popular caprice.[1] In Rome the senate was always composed of the most eminent men, and it was by receiving only such men and by excluding none of them on principle that it maintained itself at the height

[1] This is shown by the constitutional experiments recently made in some of the ultra-democratic cantons of Switzerland.

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of its power, although in strict law it could claim no right either of administration or legislation.

The senate not an exclusive nor an hereditary assembly.

The senate was never limited to certain privileged families. At the time when the government was still in the hands of the patricians, and when accordingly no plebeians were admitted, patricians alone, it is true, sat in the senate, but by no means all the patricians, nor only the heads of certain patrician families. No sort of hereditary political office ever existed in Rome, not even in the time of the kings. The legends of that period in the form handed down to us betray the influence of Greek tradition, but yet they speak only of isolated claims to the throne based upon hereditary right.[1] The strongest proof that the Romans and probably all other true Italians have never known hereditary offices of state is this, that we find no trace even of an hereditary priesthood.[2] We can therefore safely assert that the senate in the regal period was composed, as in the republic, of men who were marked as suitable by their position, experience, and personal qualifications. The title to a seat in the senate was acquired by service rendered to the community: above all, therefore, by military service. The Roman senate was at all times an assembly of experienced warriors, and was on that account admirably adapted to give directions for the conduct of military operations and foreign policy.

Admission of plebeians to the senate.

After perfect equality had been established between patricians and plebeians the disabilities were set aside which had originally excluded the larger portion of the citizens from the council. As the number of magistrates

[1] Such as the story of the sons of Ancus Marcius, who murdered Tarquinius the Elder because he had deprived them of the succession to the throne (vol. i. p. 61), and the story of the murder of Servius by the younger Tarquin (vol. i. p. 71).

[2] There is an apparent exception to this rule. All family rites were transmitted from father to son, and each paterfamilias was priest in his own house. But when several families combined to form a political community, this hereditary priesthood naturally ceased, and when family rites were transferred to the community, as in the case of the worship of Hercules, peculiar to the Potitii, the sacred functions were given to an elected priest as representative of the state. Liv. ix. 29.

was increased, a larger proportion of such men as were acquainted with all the various departments of practical politics obtained admission to the senate, and, as we shall see, these were the men whose voice was the most influential in the debates, and who originated or swayed the resolutions of the whole body.

Election and expulsion of members.

A second principle of not less importance than the right of every Roman to be admitted was this, that the dignity of senator once acquired was a dignity for life. It is true, this title was not based upon positive law. With great wisdom the framers of the Roman constitution had made a provision by which in case of necessity an unworthy member might be expelled. The censor had the right and even the duty to go through this purifying process. But it was so seldom carried out that the senatorial dignity was practically a dignity for life. Thus it happened that the traditional policy of the senate acquired that steadiness and regularity which keeps the middle road between the extreme fluctuations of a periodically changing assembly and that stubborn and blind worship of tradition which is the curse of those political assemblies which are hereditary or renewed by co-optation.

Stability of the senate.

Although the Roman senate received fresh blood from year to year, and was continually renewed, yet the old stock apparently remained unchanged, and only became more firmly established. It was never influenced by the feelings and opinions of the present time alone. It never represented a single generation. Whilst men bowed down with age still remembered the struggles of a past time in which they had been actively engaged, and tried to preserve the institutions of the past, the younger men gave due consideration to the claims of the present, or even looked forward to future contingencies. No sudden change of views and feelings could sweep away the time-honoured institutions of past ages; and yet the road of progress was not completely barred, at least not in that time when the state was in its perfect vigour. It was not until, in consequence of the development of the

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Roman power, the old republican constitution could no longer suffice to the claims of the time, that other powers were called into being, and that the old senate proved unequal to the new duties.

Representative character of the senate.

At the time when the republic had reached its maturity the senate was in point of fact—though not in theory—a representative body, being appointed by a sort of indirect election by the people. The Ovinian law[1] regulated the nomination of new senators by the censors in such a manner that the latter had little scope left for arbitrary decisions. The higher magistrates elected by the people had now a right to sit in the senate. They were thus elected, not merely to fill a magisterial office, but also to be senators on the expiration of their time of office. This right to a seat in the senate was afterwards extended to the lower magistrates; and in the senate the number of those members became constantly smaller who found admission, not through the magistracy, but by other means, such as family connexion or military distinction.

Order of senatorial debates.

The preponderating influence of the older and more experienced members—who formed, as it were, a senate within the senate—was acknowledged and regulated by a special order of debate based upon this distinction. There was not complete equality among the men elected to the council. The gradation of rank and dignity which imparted to the entire Roman state a kind of military organization was perceptible also in the senate. The body of senators was divided into two distinct classes—the speakers and the silent members. The order of debate in the succession of speakers, which in all consultative assemblies is of the greatest importance, is in our time left to the free play of party arrangements or chance;[2] in

[1] The lex Ovinia (Festus, s. v. *Præteriti*, p. 246, ed. Müller) is of unknown date. It belongs probably to a period not far removed from the Licinian law. Mommsen, *Röm. Gesch.* i. 319.

[2] This is the case at any rate in England; it is not so in those Continental assemblies in which lists are kept to regulate the succession of speakers.

Rome it was regulated by a custom which had the force of law. Only those members who had been curule magistrates were invited to give their opinion and to express it at pleasure in formal speeches. Members who had held no public offices, or only inferior offices, were usually not called upon to speak, and were therefore restricted to giving a silent vote.[1] But even the privileged senators did not all stand upon the same level of rank or dignity. Those among them who had been consuls had precedence before those who had discharged only the prætorship, and these, again, ranked before those who had been ædiles. Those of higher offices occupied distinguished seats. Even peculiar distinctions of dress marked for a long time the patrician and plebeian senators; and afterwards, when this difference was no longer of any importance,[2] similar distinctions served to mark the higher senators of curule dignity,[3] and the various grades of all.[4] The first place was occupied by the foreman of the senators (*princeps senatus*), whose name was put first on the list by the censors on the occasion of the *lectio*—the periodical reconstruction of the senate.[5]

Authority of the president.

This difference of rank among the senators regulated the order of debate. The magistrate who assembled the senate presided, and laid before it the subject on which he required its advice. He ruled the assembly in a very different manner from a modern president. A senator might speak only when he was invited by name; and this invitation was given usually according to the existing order of rank among those who had the right of explain-

All such lists are fetters, which prevent the free and natural movement of debate.

[1] On these so-called *senatores pedarii* see Lange, *Röm. Alterth.* ii. 351, in opposition to the opinion expressed by Hofmann, *Der röm. Senat*, p. 19.

[2] Nevertheless the patrician senators preserved down to the latest period the distinguishing badge of the ivory 'lunula' on their shoes. See Zonaras, vii. 9. Mommsen, *Forschungen*, p. 255.

[3] Lange, *Röm. Alterth.* ii. 350.

[4] Lange, *ib.* 356, Anm. 7.

[5] This *princeps senatus* was always a patrician, even after all the other distinctions between patricians and plebeians had been long abolished. Mommsen, *Forschungen*, 92 ff.

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ing their votes by a set speech. Again, the mode of putting the question was entirely left in the hands of the president. Of the opinions which had been expressed, he could put to the vote whichever he chose. He could arrange them in the order he thought proper—nay, he could even omit altogether to ascertain the opinion of the senate by a formal division. No senator had the right of originating motions. The president alone could do this. If an independent senator wished to propose a subject for discussion, he could do so only by mentioning it incidentally in a speech which he made on a question proposed by the president. Whilst modern parliamentary orators are obliged always to speak to the question, the Romans were obliged to allow a deviation from this rule as the only means by which subjects not introduced by the president could be mooted. It is well known that Cato never omitted to bring forward his short admonitory 'Ceterum censeo Carthaginem esse delendam,' when he was invited to speak on any subject whatever.

Ancient and modern parliamentary debates.

We see how far this narrow and clumsy order of debate was removed from the freedom, vivacity and natural sequence so largely exhibited in modern councils, especially in the English parliament. But it was inevitable, because the conditions were wanting in Rome which are indispensable to a more free and unrestricted discussion. Modern parliaments have a fixed place of meeting which never varies, and in the parliament house every member keeps his own seat;[1] they meet on days and hours regularly fixed; they have permanent presidents; and move, therefore, within accustomed barriers with perfect freedom. The Roman senate had neither regular meeting-days, nor did it assemble always in the same locality. The presidents were continually changing, because every consul, dictator, prætor, and tribune of the people, had the right of convoking it; and all these officials were changed annually. It

[1] At least in Continental parliaments, where the seats are allotted at the beginning of each session, and where every member has a lock-up desk for his papers.

was therefore a necessary and wise arrangement by which the debate was allowed to move only within certain prescribed forms, though these forms appear on the whole somewhat pedantic and illiberal. Modern parliamentary debates are secured from hasty decisions by the rules which require that bills should pass through a second and a third reading, with proper intervals in all important questions. They are protected from arbitrary and illegal influences by the supervision which a whole nation exercises over the proceedings by means of the public press. In Rome questions were put to the vote only once, and the meetings of the senate were secret, not only in theory —as in England—but in reality.[1] It is clear that under these circumstances strict forms were indispensable in the interest of free discussion. The Romans, therefore, acted wisely in not giving unbounded license to the debates of the senate.

[1] That the public were excluded from the meetings of the senate is fully established beyond the possibility of doubt by Polybius, iii. 20. He laughs at those Greek writers who related that boys of twelve years were allowed to be present during the debates. Yet the Greek writers did not invent this statement. It seems to have been the current opinion, even among Romans, that in former times senators were in the habit of taking their youthful sons to the meetings in order to train them to public business. Cato himself told a merry story in one of his speeches (Gellius, i. 23) about a young Papirius, who, on being questioned by his mother about the subject of a debate at which he had been present, made her believe that the subject of the discussion had been whether in future one man should be allowed to marry two wives, or one woman two husbands. The excitement caused by this statement among the Roman matrons was intense. They crowded round the senate-house and implored the senators to vote for the second alternative. Then it came out who was the author of the hoax, and young Papirius received the thanks of the House for having kept the secret so well. He thus acquired the surname Prætextatus, to mark his discretion at an age when the *toga prætexta* which he wore showed that he could not be expected to exhibit such mature sense. But, at the same time, a resolution was passed to exclude for the future all young men from the debates of the senate. There can be no doubt that this story was invented to account for the surname Prætextatus in the Papirian family. The date of the alleged occurrence is not given. If we were inclined to give credence to it, we should have to place it at a very early date; but it is not likely that the republican senate, with all its gravity and decorum (its στυγνότης, as Polybius, iii. 20, 3, calls it), ever admitted boys. It was not till the senate had lost its former importance that Augustus allowed the presence of the sons of members (Sueton. *Aug.* 3).

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Senatorial votes.

As the magistrates convoked the senate in order to hear its advice, it was natural that they themselves should abstain from recording and counting their own votes. This principle was extended still further, so that not only the president but all the magistrates of the year took no part in any division. We may be surprised at this practice, because the Roman annual magistrates did not form what we should call a ministry, of which every member considers himself bound to support the measures proposed by any other member. But it was a practice exceedingly useful for preventing the magistrates from involving the senate in their frequent personal conflicts with one another. It was thus impossible that the two consuls should oppose one another in voting on one and the same question, one as head of the majority, the other as leader of the minority, in the senate. It was easier for the senate to preserve the unity of the government, with which the great number and variety of the annual magistrates was apt to interfere. We shall explain lower down how difficult this often was, and how useful the tribuneship was for effecting this object.[1]

The senatorial order.

In every political body the influence which it exercises upon the government is measured not solely by the prerogatives allowed to it by the letter of the law. The respect inspired by a ruling class through the personal dignity of its members increases—or, rather, establishes and maintains—the willing obedience of the mass by which alone every state is upheld. It is not a matter of indifference whether a senate be composed of rich or poor men; of men descended from an ancient nobility, or of men of humble extraction; of men who in the daily intercourse of life inspire respect, or of men whom the people look upon with indifference or even with contempt. The legal power of the Roman senate was greatly strengthened by the social standing of its members. The senate of the older time had been exclusively patrician. This distinction of noble birth was inherited by the mixed senate of a later

[1] See chaps. iii. and viii.

period, and its weight grew instead of diminishing, because in course of time, as the power of the republic and the national wealth increased, the ruling class was raised proportionately higher over the mass of the people. We find the senate, as such, and its individual members, more and more separated as a governing body, distinct from the common people. Though a 'senatorial order,' marked off from the rest of the community by a higher census, did not exist in form until a later time, yet the beginning of such a separation was made as early as the Punic wars, and the senate had, in fact, held its lofty position for a long time when, in the year 194 B.C., the line which separated it from the people was clearly proclaimed by the arrangement which appointed special seats for the senators in the public theatre. From this time forward the Roman people could convince themselves with their own eyes that there was a gulf between them and their governing nobility. It was already acknowledged that the members of the senate were exclusively called upon to rule, for a special law prohibited them [1] from engaging in the ordinary trades of other citizens. The Roman senator was not to stoop to lucrative occupations which, in the eyes of all genuine Romans, were not compatible with disinterested honesty. He was thus in every respect to be qualified to take part in the government; and if the senate had in reality the right of deciding on war and peace, of influencing the legislation, the elections, and the administration, the Roman people looked upon this right, not as a usurpation, but as a well-deserved privilege. The proverbial envy with which elsewhere the governed people regarded those who ruled them, the disaffection and bitter hatred which in the Greek republics so frequently excited the populace against the rule of superior men, had no existence in the good period of the republic—*i.e.* from the peace concluded between patricians and plebeians down to the time of the Gracchi. During this long period no opposition of the popular party to the

[1] The Lex Claudia, of the year 218 B.C. See vol. ii. p. 196.

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nobility is perceptible.[1] The Roman state was agitated internally only by personal disputes among the nobles themselves, and by questions of minor importance; externally it was engaged in those great wars which subjugated the ancient world, and the efforts demanded by these wars, with the triumphs thus secured, contributed in no small degree to internal harmony and concord.

[1] See below, chap. xvi.

CHAPTER III.

THE ADMINISTRATION OF THE REPUBLIC IN GENERAL.

The position and influence of magistrates generally.

ALTHOUGH the magistrates as administrative officers of a community are intrusted only with the maintenance of the established order of things, with the execution of the laws and the carrying out of the will of the people, they nevertheless occupy so prominent a position in the state that it has become customary to consider them as the principal part of the whole political organization, and to classify and name states according to the peculiar character of their executive, just as plants are classified according to the nature and arrangement of their blossoms. Nor is this proceeding objectionable. For though the executive power of magistrates is not the root but the product of the political order of a community, yet it is a product brought forth by organic development, and bears witness to the innermost nature of this organization. Besides, the magistrates are necessarily intrusted with so extensive a power that they occupy a position distinct and apart from the mass of the citizens, from which position they exercise a very marked and determining influence upon the people generally. The magistrates do not only conduct the ordinary routine business, the administration of the state: they do not watch merely over the execution of existing laws and rules. On the contrary, they take an essential and determining part in the progressive movement of the state; they are called upon to represent the state in its intercourse with other nations, and to protect it from internal dangers; it is their duty to adopt on an emergency measures which are necessary for the public good—in other words, they have to conduct the govern-

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ment as distinct from the administration. These two functions cannot always be kept clearly distinct. The one often passes into the other, though in different nations and at different times the distinction has been more or less clearly marked.

Position of magistrates in a republic.

It is part of the nature of a republican constitution with its periodical change of magistrates, that a large proportion of the purely formal functions are performed by a class of subordinate officials and clerks who have gained the necessary knowledge of their business by long experience; whilst for deciding more important political questions, for conducting the government, properly speaking, the magistrates are supported by a senate as permanent council. It appears, therefore, that in a republic the scope for the free action of the magistrates is much restricted, and that little is left to them beyond the execution of formal duties—*i.e.* that they carry on not so much the government as the administration. And this was actually the case in Rome. In war alone, where the general, like every individual man, has to rely upon himself, where at a moment's notice the most important resolutions must be taken, and the decision rests upon personal responsibility, the advice of a senate and the co-operation of subordinate officials must be dispensed with. At other times, in the peaceable intercourse of citizens, in the daily discharge of the routine duties of administration and government, the formalities more than the real decisions lie in the hands of the magistrates. Seemingly, it is true, the consuls, prætors, and censors acted with great freedom according to their own judgment, and decided important questions; but in truth they could not often find scope for independent action, and as a still rarer exception it sometimes happened that they carried their independence so far as to oppose the outspoken will of the senate or the popular sentiment. They naturally acted under the feeling of responsibility, knowing that after the expiration of their short period of authority they were liable to be called to account for their acts whilst in office. The Roman magis-

trates on the whole, therefore, were not able to shine as independent and brilliant statesmen, masters of the situation, and guided by their own personal convictions. We must not be surprised at their general mediocrity. They lacked the conditions necessary to free and spontaneous action. They could exercise on the whole merely a furthering or a hindering influence upon matters of detail; they were not able to direct the great course of events. No individual statesman ever was able at any period of the Roman republic up to the days of the Revolution to exercise more than a temporary influence—not even a Scipio Africanus or a Cato.

Constant succession of officers.

The principal cause of this by no means extraordinary phenomenon is to be found in the fundamental law of the republican organization, which limited the duration of magisterial offices to a fixed period, and put restrictions upon the right of re-election. The annual change of the supreme magistrates made it impossible for an individual to occupy for a length of time a dominant position. Even the greatest genius is kept down if no time or opportunity is given him for displaying his powers. History knows no heroes in any department of human action who are perfect at once, and who can carry out great thoughts and deeds in a short space of time.

Division of the executive power.

Another obstacle to the production of great statesmen was the division of the executive power among numerous colleagues. At the time when the republic was in its highest perfection the service of the state required annually two consuls, several prætors, two curule ædiles, two plebeian ædiles, four quæstors, ten tribunes of the people, every five years two censors—*i.e.* about twenty officers annually who were to be qualified to conduct important branches of the administration. And as if this were not enough, it was insisted upon in Rome that one of the consuls should be chosen from among the patricians,[1]

[1] Up to the year 172 B.C. one of the two consuls was always a patrician, though the Licinian law, 366 B.C., provided only for the election of *at least* one plebeian annually, without forbidding the election of two.

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even after this restriction had ceased to have any meaning and when the diminished number of patricians made the choice more and more difficult. How could the citizens of a single town be in a condition to respond to such frequent and numerous calls otherwise than by contenting themselves with a certain moderate average talent? In that case they could find men who had sufficient capacity and experience for the current business and for formal duties; but great minds, men of wide grasp and intellectual power, would necessarily have felt cramped and thwarted in the narrow confines of an annual office.

Restrictions and checks on Roman magistrates.

So high then was the price which the Romans paid for the security of their republican constitution. It was only by systematically restraining all aspiring minds, and by imposing upon the executive magistrates the condition of mediocrity, that their liberty remained unendangered. And this principle which opposed the growth of individual talents was adhered to with increasing strictness. Whilst in the earlier times up to the fourth century B.C. re-elections to the consulship occur frequently, we find the rule established in the year 342 B.C. that no one should be chosen consul a second time, until an interval of ten years had elapsed. In extreme cases, indeed, this rule was often broken.[1] But it was enforced again in ordinary times, and in the course of the second century B.C. other restrictions were added, such as the Lex Villia, 180 B.C., which determined the order of succession in which the republican offices were to be held, and the age requisite for a

[1] For instance, in 298 B.C., Liv. x. 13, 8. During the second Punic war a plebiscite was carried, in 217 B.C., to suspend the restriction of the law of 342 B.C. so long as the war should last in Italy. Liv. xxvii. 6, 7. After this period the law of 342 B.C. revived. About 150 B.C. a more sweeping law was passed forbidding re-elections altogether. Liv. epit. 56. Festus, s. v. *Pavimenta*, p. 242, Müll. Such restrictive laws could easily be set aside in times of necessity, according to the principles enounced by Cicero *De Imperio Pomp.* 20, 60: Maiores nostros in pace consuetudini, in bello utilitati paruisse. A plebiscite could ordain that any person specially named should be exempt from legal restrictions ('ut legibus solveretur'). This was done in favour of the younger Scipio Africanus, 134 B.C., of Marius, 104-100 B.C., and again 86 B.C.

candidate to each of these offices.[1] In these restrictions unknown to the more ancient period we see the disadvantages under which every republic labours in comparison with the more liberal form of government of a constitutional monarchy. The latter realises that which is essential in a republic, the supremacy of law and the responsibility of magistrates, and yet it is not limited in the choice of magistrates with regard to fixed times of election or duration of office; it is not compelled to forego the services of an experienced man because perchance he has already served the state for a certain length of time or a certain number of times: and, on the other hand, it is not bound to retain any magistrate in office for a prescribed unalterable period, even though the choice should have been unhappy and injurious to the community.[2]

The Imperium.

The constitutional law of Rome possessed one means of avoiding frequent changes of commanders in war. This was the prorogation of the imperium, which was first made use of in the second Samnite war, 326 B.C.[3] But this apparently simple, natural and appropriate means of carrying on military operations according to one consecutive plan was very rarely employed in the earlier period.[4]

[1] Of the older period Cicero says (*Phil.* v. 17, 47): Maiores nostri veteres illi admodum antiqui leges annales non habebant, quas multis post annis attulit ambitio. Of the year 180 B.C. Livy reports, xl. 44: Eo anno rogatio primum lata est a L. Villio tribuno plebis, quot annos nati quemque magistratum peterent caperentque. The age was fixed by the regulation that nobody should be a candidate for the quæstorship, the lowest office in the scale, before he had completed ten years of military service. This would make the age of twenty-seven years the earliest for any of the offices of state. Regular intervals required between the other offices would fix the respective date for each. See Mommsen, *Röm. Staatsrecht*, i. p. 463 ff. A similar restriction was contained in the Licinian and Ælutian laws, by which the movers of extraordinary commissions were excluded from serving on those commissions. Comp. Lange, *Röm. Alterth.* ii. p. 297.

[2] The danger of a predetermined period of office, fixed by law and unalterable except by a revolution, was shown not long ago in the presidency of Mr. Johnson, the successor of Abraham Lincoln. The United States escaped with difficulty an internal convulsion, as the Constitution provided no means for bringing about an agreement between the chief executive officer and the majority of the people.

[3] Vol. i. p. 384.

[4] The next instance is the prorogation of the command of Q. Fabius

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During the Punic wars the state was compelled more frequently to have recourse to it. But even then the public mind seems to have been disquieted by a dim foreboding that in lengthened military commands might be found the origin of monarchical government. Of all the republican states of antiquity Carthage alone was able to entrust commands of longer duration to her generals without experiencing or, as far as we know, fearing danger to her liberty.

Magisterial prerogatives.

The public law of Rome, like that of every other republic, was obliged to put up with two evils. It had to guarantee its magistrates against formal deposition from their offices, and against impeachment during their time of office. The rule which prohibited deposition during the fixed period of office was no arbitrary rule which might have been dispensed with, but it flowed naturally from the first principle of the republican constitution, which is the limitation of the terms of public offices. If the title of a magistrate to hold his office for a fixed period is not respected, if he can be dismissed at any time before the expiration of his time of office on the ground of malversation, the whole legal order of a republic is overthrown. In case a magistrate should not only prove incapable, or commit errors injurious to the state, but should show himself openly an enemy to the existing order of things, open resistance to him would, of course, be justified and necessary. But in that case the formal law would be disregarded on both sides. No constitution can proceed on the presumption that legal measures will ever have to be taken to prevent an attack upon itself by the person entrusted with supreme power for the protection and execution of the law. If this presumption is falsified by a *coup d'état*, then the revolution from above can be opposed only by a revolution from below, not by any pro-

Rullianus, 307 B.C. Liv. ix. 42. Only two more cases are recorded by Livy (x. 16, x. 22) before the Punic wars. In the war with Hannibal prorogations occur more frequently. Liv. xxiii. 25, xxiv. 11, xxv. 6, xxiv. 10.

visions of the law, because the execution of the law itself is placed in the hands of the very men who in this case would have to be restrained by the law.[1]

Responsibility of republican magistrates.

Strictly speaking, it is only the supreme magistrates of a republic that can claim irremoveability from office, not those of subordinate rank, because the latter can easily be made responsible to their superiors. But in Rome only the quæstors[2] and the masters of the horse[3] held such a position with regard to the consuls or dictators that the latter could issue orders to them, and control their official actions. The remaining magistrates were in no manner subordinate to others, except when they were all superseded by a dictator. They were invested with their rights by the people, and being responsible to the people alone, they could be made to answer for their official actions only after the expiration of their time of office.

Removal of magistrates.

There were, however, ways and means of inducing, if not of compelling, the higher as well as the lower magistrates to lay down their office. Firstly, the religious ceremonies with which the election, the entry upon office, and other formal proceedings were attended, offered an opportunity for declaring that an official had not been duly appointed. It was not advisable to oppose a declara-

[1] The public law at Rome went so far in recognising the impossibility of deposing a public magistrate by a constitutional process that in the case of the refusal of a magistrate to resign his authority after the expiration of his period of office the only redress seemed to be the curse of the gods or actual violence. It was on this foundation that Valerius Poplicola, in one of the Valerian laws, established the republican government (vol. i. p. 128), nor could any of the following statesmen discover legal remedies to be put in the place of a law, which by its appeal to the gods and to brute force admitted the absence of a legal barrier. A tribune of the people might, by virtue of his 'sacrosancta potestas,' oppose a magistrate who would attempt to continue his authority beyond the legal period; he might even, in case of necessity, seize him and hurl him from the Tarpeian rock. But, after all, such a proceeding would have been an illegal stretch of the tribunician power, and in effect would have been revolutionary.

[2] Polyb. vi. 12, 8.

[3] Thus the dictator L. Papirius Cursor forbade his refractory subordinate, the master of the horse, Q. Fabius Rullianus, 'quicquam pro magistratu agere.' Liv. viii. 36. It is a great exception when a consul gives directions to a prætor as to a subordinate officer, as related by Livy, xxvii. 5, 17.

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tion to this effect made by an assembly of augurs, at the request, of course, of the senate. Secondly, magistrates were always so dependent upon the senate that a senatorial decree was usually sufficient to induce them to abdicate. If they refused, they ran the risk of being made to suffer for it after the expiration of their time of office. In such cases the law, which admitted of no formal deposition, was, strictly speaking, observed; the magistrates were not deposed; they abdicated voluntarily; and the desired result was obtained. But when the tribune Marcus Octavius refused to abdicate at the urgent request of Tiberius Gracchus, and when, upon his refusal to abdicate, he was, on the motion of his opponent, formally declared by the comitia of tribes to have forfeited his office, then the old constitutional order of things was violated and the way was paved for the revolution.[1]

Privileges of magistrates.

In addition to irremoveability from office, the Roman magistrates enjoyed irresponsibility during the term of office—in other words, exemption from prosecution for official acts. Roman magistrates, as such, could not be prosecuted.[2] This also is a natural and necessary consequence of the republican constitution. Every accusation presupposes the possibility of a condemnation, and a condemnation would lessen the dignity of a magistrate, nay, of the people themselves, whom he represents during his period of office. Accordingly, no accusation was ever brought against an actual magistrate.[3]

[1] Becker, *Röm. Alterth.* ii. 2, p. 53.

[2] Even private suits could not be brought against the higher magistrates during their year of office. Gell. xii. 13.

[3] This is proved beyond all doubt by the testimony of Polybius, vii. 10, 10: *τὸ δὲ μέγιστον ἀποτιθεμένους τὴν ἀρχὴν δεῖ τὰς εὐθύνας ὑπέχειν τῶν πεπραγμένων.* Comp. Liv. ix. 26, xli. 6, 2, and 7, 10. Dionys. x. 50. There is actually preserved a fragment of a law, the Lex Acilia in the *Corpus Inscript. Lat.* I. viii., in which the exemption of dictators, consuls, prætors, and masters of the horse, is specially mentioned: De heisce dum mag. aut imperium habebunt ioudicium non fiet. dic. cos. pr. mag. eq. . . . The case related by Livy, xliii. 16, does not invalidate the rule. The two censors of 169 B.C. voluntarily and for special reasons waived their right, and submitted to an indictment, but they suspended their public functions during the trial—*i.e.* they temporarily resigned. Another case related by Valerius Maximus, vi. 1,

CHAP. III.

Trial of magistrates.

The irresponsibility of the magistrates in office contained no danger to the liberties of the people, because it was a fundamental principle of the Roman republic that every magistrate after the expiration of his term of office could be made answerable for his acts. Strange to say, the Romans had not, like the Greeks, a technical term[1] to designate the act of rendering account; the reason probably being that cases are rare of magistrates being made answerable and actually punished for offences.[2] Roman history has far more instances in which magistrates ought to have been called upon to account for their acts but were not. One cannot fail to perceive that the ruling nobility were able not only to guide the magistrates selected from their body in the course which was advantageous to the interests of their party, but also to shield them from the dangerous consequences which illegal proceedings might have had for them. The political trials in Rome have all more or less the character of party manœuvres. The accusations were seldom brought in the interest of the state, and sentences of acquittal or condemnation were not given on the ground of purely judicial considerations. It was easy for the ruling party to bring about the tribunician impeachment of a troublesome opponent, and it was just as easy for them to take into their protection an accused member of their party. And not only could

7, is an exception which proves the rule. The tribune of the people C. Scantinius was prosecuted, not for any public malversation, but for a criminal act which had nothing to do with his official duties. M. Claudius Marcellus ædilis curulis C. Scantinio Capitolino tr. pl. diem ad populum dixit, quod filium suum de stupro appellasset; eoque asseverante se cogi non posse, ut adesset, quia sacrosanctam potestatem haberet, et ob id tribunicium auxilium implorante; totum collegium tribunorum negavit se intercedere, quominus pudicitiæ quæstio peragerctur. Citatus igitur Scantinius reus uno teste qui tentatus erat, damnatus est. This case proves neither that the tribunes were generally responsible for official acts, nor that they had ceased to be *sacrosancti*. On the other hand, we see that Tiberius Gracchus tried to obtain a second tribuneship in the hope of thus putting off a public prosecution. Mommsen, *Röm. Staatsrecht*, i. 88, ii. 1, 289.

[1] The word *ratio* in the phrase *rationem reddere* is much too vague and general, and cannot be compared with the precise *εὐθύνη*. Comp. above, p. 40, n. 1.

[2] Liv. ii. 41, 52, 54, 61; iii. 31.; xxii. 40, 49; xxvi. 2, 3; xxvii. 34; xli. 6. Dionys. viii. 77; ix. 27, 28, 37; x. 40.

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a magistrate in Rome feel tolerably secure from responsibility for any violation of his official duty, but also common offences, such as plundering allies, or the embezzlement of public funds, were screened by the charitable disposition of a powerful nobility. The natural conclusion from all these considerations is that the constitutional responsibility of magistrates in Rome was rarely enforced in reality, and was therefore of little significance.[1] How the right of public impeachment could be abused, and was abused, for electioneering purposes, will appear when we come to discuss the subject of popular elections.

Constitutional checks.

The Roman republic had, from the first, other means of proceeding against arbitrary dealings and offences of magistrates. Prevention was preferred to punishment. The entire organization of the magistracy aimed at this end, more especially the division of offices among colleagues, and, in connexion with it, the right of intercession. Above all, it was the duty of the tribunes of the people to exercise this right, and they frequently on their own account, as well as in the service of the senate, opposed dangerous measures of the magistrates before they were put into execution. In the common administration of law, the power which the Roman magistrates exercised over the people was early limited by the Valerian laws of provocation, which were afterwards completed by the Porcian laws; further by the limitation of fines to a moderate maximum; and finally by the actual abolition of capital punishment. Thus there remained no one but the subjects and allies who might be seriously injured by incapable and tyrannical magistrates; and the interests of these two classes were regarded by the Romans with supreme indifference.

We do not mean to deny that in the legal responsibility of magistrates the Roman state possessed sufficient

[1] It has been remarked (vol. ii. p. 482) that the indulgence shown to the members of the nobility for mismanagement or malversation was strangely contrasted by the severity with which the lower class of citizens serving in the army was treated, such as the prisoners of war in the hands of Hannibal.

security against arbitrary government. The very possibility of being impeached must have served as a warning, and in some cases the laws were actually brought to bear upon guilty offenders; but, on the whole, the welfare of the republic rested, not upon these laws, but on the constitutional checks already noticed. It was by these measures that the conduct of the magistrates was chiefly directed, and though the machinery was clumsy and its working capricious, yet the Romans managed to apply it on the whole successfully and to preserve in their commonwealth a fair degree of order and regularity.

General effect of these checks.

Thus, by breaking up the unity of the executive power, and dividing it among a number of officials, the Romans attained at least the principal object for the sake of which they had made this division a fundamental feature of their constitution.[1] It served to restrain the magistrates by mutual control, and made it possible for the constitution to confer upon them at times such extraordinary powers as were unusual in the republics of Greece.[2] But this advantage was dearly paid for. It was paid for with the sacrifice of a centralised organization of the power of the state, and it produced internal and external crises which were overcome only by the healthy good sense of the people, by the good fortune of the eternal city, and by the circumstance that Rome, after all, had more unity in her organization than the enemies with whom she had to struggle for pre-eminence.

Multiplication of magistrates.

In the course of our narrative we have often pointed out the great disadvantages which attended military operations under the Roman constitution in consequence of the division of the supreme command. The Romans themselves were conscious of these disadvantages, and resorted to the dictatorship in times of distress in order to unite the supreme power in one hand. This was regularly done in the first centuries of the republic, in the period

The dictatorship.

[1] The division of the consulate between two colleagues of equal rank and power admits of no other motive. See Schwegler, *Röm. Gesch.* ii. p. 117.

[2] Comp. Polyb. vi. 15.

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of the wars with the Æquians and Volscians, as also in the Samnite wars. Between the dictatorship of Camillus, 367 B.C., and that of Hortensius, 287 B.C.—that is, during a space of eighty years—no less than twenty-seven dictators[1] are noted in the fasti: on an average, therefore, one dictator in three years. Hence we see how important a part the dictatorship played in the Roman magistracy during this period of violent struggles for the dominion of Italy. But after the passing of the Hortensian laws, which mark a distinct period in the development of the constitution by establishing permanently the sovereignty of the plebeian tribes after the fourth secession of the plebs, dictators occur only at rare intervals in the Roman annals, and appear no longer as an essential element of the constitution. In the war with Pyrrhus and the Tarentines no dictator was appointed. All through the first war with Carthage the idea of resorting to a dictatorship only once entered the minds of the Romans—after the terrible defeat of Drepana (249 B.C.). In the second Punic war the dictatorship was revived only after the battles of the lake Thrasymenus and of Cannæ. But this was the last occasion on which this institution of the old republic was revived. It remained henceforth practically abolished until, in the time of the civil wars, it was re-established by Sulla, who made the vain attempt to restore the constitution of the old republic, and to destroy everything by which democracy had modified the unlimited rule of the nobility.

Scattered powers of the Roman executive.

By the disuse of the dictatorship the Roman constitution lost the only means which it possessed of occasionally uniting together in one hand the scattered powers of the several magistrates, and of thus conferring upon the government in times of emergency an effective unity of action. This disadvantage must have been felt the more keenly as time went on, since the number of the higher

[1] This is the number of real dictators (*dictatores rei gerundæ causa*), without counting the dictators nominated for holding the comitia, for presiding at the festival of the *feriæ Latinæ*, or for fixing the nail (*clavi figendi causa*).

magistrates had been steadily increasing, and at last included, besides the two consuls, the prætors, the ædiles, and the censors, without counting the ten tribunes of the people. All these magistrates together formed the executive government—*i.e.* they were entrusted with the duty of preserving public order and of watching over the execution of the laws; they were, in fact, what we should call, in the present time, the ministry. We are accustomed to take for granted that in a ministry there exists a general agreement in the political views of the individual members, as well as mutual support and what has lately come to be called 'solidarity'—*i.e.* the feeling that each member is answerable for the actions of the rest. The ministry of a truly constitutional state forms a complete whole, and must necessarily have the same opinion, at least on all important questions. An independent policy on the part of a single minister or a tendency to opposition is not admissible. Opposition, it is true, is justified in constitutional states, but its place is outside the ministry, and in that place, though it can watch, criticise, and influence the government, it cannot disturb its regular, legal action.

Want of cohesion among Roman magistrates.

In Rome such unity of the executive power was never realised, nor was it even aimed at. For, in the first instance, the right of intercession given to each magistrate for the purpose of resisting any illegal or inopportune action of his colleague was a fundamental law of the republic and an indispensable safeguard for the protection of personal freedom. And, moreover, even if this had not been the case, yet the manner of electing magistrates could not possibly have had the result of selecting every year homogeneous elements for the formation of the executive government; for the right of election was vested in different assemblies (comitia centuriata and comitia tributa), and the elections took place at different times, consequently under various influences, and independently of one another. Hence not only difference of opinion was often found among the various magistrates of one year, but even determined hostility. Concord and

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agreement among colleagues are frequently praised by the Roman historians as almost an unexpected piece of good fortune, and in times of danger their disputes had often deplorable consequences. In the very midst of the troubles of the Hannibalic war this weakness of the republican constitution was frequently apparent. Nor was it in war only, but also in the internal management of the state, that the same want of a united administration and government was felt; and this want produced at times the very absence and negation of all government when the intercession of the tribunes brought every magisterial action to a standstill.

Effects of the annual change of officers.

A defect not less serious than the want of unity among the magistrates of each year was the want of consistency caused by the annual change of these magistrates. It is true that a consistent policy may not be always desirable. It may even become a curse, if it helps to resist a necessary reform. In the progress of a political community new questions are constantly presenting themselves, and to deal with these is rarely within the power of the same men who have previously advocated other principles. The change of persons is, therefore, absolutely necessary for political growth. But it is evident that this growth cannot be determined by the annual revolution of the sun. It is dependent upon variable contingencies, upon internal and external complications, upon good or bad fortune, and finally upon the accidental concurrence of leading minds; it can be for a long time restrained by unexpected impediments, then suddenly furthered by fortunate circumstances—in short, it is irregular and beyond all calculation. It was a defect, therefore, in the Roman republic—as it is a defect of every republican constitution—that the change of magistrates was made dependent, not, as it is in modern constitutional countries, merely upon new conformations of political parties, or upon extraordinary events or the rising up of new problems which demand new men for their solution, but upon a cause unconnected with the internal

life of the state—in short, that it was made to coincide with certain periods of time previously fixed. The frequent change of magistrates after short periods of office therefore impeded the natural course of development, and interfered, without any internal cause, with the consistency of the administration. New men with new views were constantly called upon to continue a work which they had not begun, and often had to defend principles which they did not hold. The chances of elections were incalculable. Men might be chosen who, not from principle, but from mere whims or personal dislike for their predecessors, defended other views, and thus caused an uncertainty and a vacillation necessarily disadvantageous to the state.

Counter-influence of the senate.

The two last-named evils were so serious that they would have sufficed to injure the Roman state most materially had they not been checked by the power of the senate. This body possessed precisely those qualities which were wanting to the magistracy. In opposition to the continual change of the magistrates we find here personified stability, and oneness of will in opposition to the divisions and conflicts of opinion in the many-headed magistracy. The Roman senate was, therefore, the bond of union which held together the centrifugal forces represented by the magistrates.[1] Even in the senate, it is true, different views were held and violent conflicts frequently broke out; but the result of every debate was always a clear resolution of the majority, to which the minority was obliged to submit, and which it could neither prevent by intercession nor annul by disapprobation. Thus the senate determined upon the policy and laid down the

[1] In order to decide rival claims of colleagues—for instance, to settle which of the consuls was to carry on a campaign—the Romans availed themselves of the rude process of casting lots, or at the request of the senate the two claimants came to a friendly agreement among themselves. Sometimes the question was decided by a decree of the senate, which was the only proper and sensible mode. At the time of the established authority of the senate the decision was generally given by that body. Mommsen, *Röm. Staatsrecht*, i. p. 82. By a law of C. Gracchus the senate determined the consular provinces before the elections had taken place. Cic. *De Prov. Cons.* 2, 3.

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rules destined to guide the action of the magistrates, whose voluntary submission to the authority of the senate was an essential condition for the preservation of order, uniformity, and consistency in the government. At the same time there was in the organization of the senate a guarantee for the further development of political institutions, while its experience, wisdom, and patriotism insured the success of its foreign policy.

Difficulties besetting the election of magistrates.

The election of magistrates by the suffrages of the people is one of the fundamental conditions of every republican constitution, and together with the limitation of the terms of office and the responsibility of officials thus rendered possible, it forms the groundwork of a republic.[1] Nothing sounds better in theory than this arrangement. If a whole people by its free choice elects the most suitable man in order to confer upon him public power, it would appear that the state must be in a happy condition. There is but one drawback in the working of this rule—viz. that it has always been found extremely difficult to hit upon the best man, and still more difficult to convince the majority of the people that precisely this man and no other is the best man. Opinions about the fittest choice have always varied considerably, and the necessity has thus arisen for a minority to submit to the decree of a majority. This necessity is in itself no misfortune. For it will occur in all human affairs as long as difference of opinion exists, and as long as laws and measures have to be adopted for the community as a whole. The minority of the people can perhaps more easily consent to submit to a man chosen by the majority than to the laws decreed by the majority. For it may hope upon a new election to carry its candidate, whereas laws as a rule are destined to remain in force for indefinite periods. But a far greater danger than the necessary division of the people in their choice of a leader is caused by the circumstance that offices, as soon as they present personal advantages, are sought for by unworthy men and in an unworthy manner.

[1] Comp. Polyb. vi. 14, 8: καὶ μὴν τὰς ἀρχὰς ὁ δῆμος δίδωσι τοῖς ἀξίοις ὅπερ ἐστὶ κάλλιστον ἆθλον ἐν πολιτείᾳ καλοκαγαθίας.

It is then no longer the people who seek for the most suitable candidates, but candidates come forward on their own account, proclaim themselves anxious to obtain the suffrages of the people, and vie with one another for the popular favour. The question is now no longer who is the most able man, but who has the greatest influence to secure for himself the largest number of votes. The result is a formal competition for office among rivals who soon resort to very questionable means. The evil had not yet proceeded very far; on the contrary, it was still a period of political innocence at Rome when candidates for office endeavoured to support their claims merely by artificially making their togas more white and shining than those of other citizens in order to attract attention. It was likewise a time of political virtue when, in the year 432 B.C., measures were taken to prevent this harmless proceeding by a law which of course was utterly useless.[1] The matter became a little more serious when, in the year 358 B.C., the candidates visited the markets and public assemblies in order to canvass for votes. It was now thought necessary to restrain these electioneering proceedings by a new law.[2] If this law was directed merely against the natural and legitimate endeavours of candidates seeking to obtain votes, and not against really objectionable practices, such as bribery and the like, it was an attempt as foolish and senseless as the attempt to forbid the taking of interest for money loans. A popular election presupposes the solicitation of votes, and candidates must have lawful means at their disposal for obtaining their ends. Perhaps the Roman nobility on making this law (shortly after 366 B.C., the year of the Leges Liciniæ) flattered themselves with the hope that it would be possible for the ruling families, if free canvassing were restricted, to designate on each occasion the candidates of

[1] Liv. iv. 25, 11: Placet tollendæ ambitionis causa tribunos legem promulgare, ne cui album in vestimentum addere petitionis liceret causa.

[2] The Lex Poetelia de ambitu. Liv. vii. 15, 12: Ea rogatione novorum maxime hominum ambitionem, qui nundinas et conciliabula obire soliti erant, compressam credebant.

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their own choice. But the law was in fact nothing but a proof of the want of wisdom of the time. It remained a dead letter, just like the old prohibition of whitened togas.

Growth of bribery and undue influence.

As with the extension of the Roman dominion public offices became more lucrative, they were more and more sought after, and to the former means of securing the popular votes were added new ones far more objectionable. Candidates now no longer limited themselves to persuasion and entreaty, to recommendation and promises, but proceeded to purchase votes. We are not informed how long this evil practice had already existed when, in the year 181 B.C., energetic measures were adopted to prevent it. It must have been difficult to discover the first instances of bribery.[1] Evils of this kind are at first so bashful and secret, they increase so gradually and imperceptibly, that they are not noticed before some amount of mischief has been done, and until they have grown so formidable that it is no longer possible to grapple with them successfully. Thus the Lex Cornelia Bæbia, which was passed in the year 181 B.C., at the instigation or at least with the co-operation of Marcus Porcius Cato,[2] was utterly useless, although the punishment which it threatened for bribery was ten years' incapacity for holding office. The same fate attended a law of the year 159.[3]

[1] That bribery and corruption must have been rife at the time may be inferred from Livy, xxxvii. 57, 9. In the year 189 B.C. there were no less than six candidates for the censorship, and among them Manius Acilius Glabrio, 'in quem, quod multa congiaria habuerat, quibus magnam partem hominum obligaverat, favor populi se inclinabat.' The *congiaria* were not only presents of oil, such as are mentioned by Livy (xxv. 2, 8) as having been distributed by P. Scipio, 218 B.C., on the occasion of his election to the ædileship, but they included presents of money, corn, and wine to the electors. Acilius Glabrio lost his election, in spite of the favour which his *congiaria* had secured him, by a criminal prosecution instituted against him by his rivals, who charged him with embezzlement in the war with Antiochus. The criminal law was thus called in to decide the chances of contested elections. See below, chap. xvi.

[2] Lange, *Röm. Alterth.* ii. p. 241. That this law was directed against bribery may be inferred from Polybius (vi. 56), in whose time, as is apparent from the passage in question, bribery was very well understood in Rome. Comp. Lange, *Röm. Alterth.* ii. p. 618. Becker, *Röm. Alterth.* ii. p. 41.

[3] The Lex Cornelia Fulvia. Liv. epit. 47.

Modes of winning popular favour.

One especially dangerous mode of influencing elections which is altogether incompatible with public order had not at that time made its appearance in Rome. Actual force was not yet employed instead of persuasion or bribes. When it became customary for one party to belabour their opponents with cudgels and swords in order to make sure of a majority of votes, then not only the freedom of election was lost, but there soon was an end of elections altogether and of the republican constitution. But there was yet another method of gaining the favour of the electors, a method that could not be attacked by penal laws, because it formed an essential part in the organization of the Roman state and the Roman religion. The magistrates were charged with celebrating at the public expense the solemn games that took place every year on the occasion of several religious and national festivals. After the creation of the ædileship the ædiles had the management of these games. As public funds were voted but sparingly for such purposes, the magistrates saw themselves called upon to supply at their own charge means for the more splendid exhibition of the games. They thus rendered a service to the gods and the community, and naturally no one could find fault with them if they obtained the favour of their fellow-citizens by such acts of liberality in a public cause. The ædileship was the preliminary step to the prætorship and the consulship, and the custom became gradually introduced that those men who aspired to the posts of honour were obliged to purchase their chance of success by the splendour of the spectacles they offered to the people.

Gradual lowering of the civic character.

Nor were such spectacles restricted to the ædiles or to the public festivals which came round periodically every year. Other occasions were found. Funerals offered opportunities for the games of gladiators and theatrical representations to be given by the heir of the deceased. A general engaged in war might make a solemn vow, and in consequence of such a vow he could hope not only to obtain military advantages, but he could also parade his

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merits before the eyes of the people by celebrating votive games for their amusement. If on such occasions the people were entertained, or if oil and meat were distributed among the poor,[1] this could hardly be looked upon as an open bribe; but it served to gain precisely the same object and contributed together with a thousand other causes to undermine the independence of the Roman citizens, to lower the right of citizenship to the level of a claim to public support, and to hasten the time when the Roman citizens were glad to exchange their birthright for bread and games.

The art of obtaining votes.

It was a vain attempt that was made, in the year 139 B.C., by the Lex Gabinia to neutralise by a process of secret voting the influence that bribes and other devices had upon the electors. All the evils connected with elections continued unabated in spite of the ballot laws (the *leges tabulariæ*), and we find that the art of electioneering in the latter period of the republic was brought to such perfection that no manner of persuasion, bribery, deception and intimidation was excluded. The laws on secret voting were as powerless to produce honesty of electors and candidates in Rome as ballot laws are at present. The object of direct bribery by means of money, as well as indirect bribery in the shape of games and public largesses, was to recommend the person of a candidate to the people. But this alone was not sufficient to defeat candidates of the opposite party. One might, it is true, hope to oust an opponent by offering a higher price for the votes of the electors, but this process often presented difficulties and was always very expensive. Another method was therefore invented for securing an election. It became customary to bring legal actions

[1] A *visceratio* is mentioned by Livy, viii. 22, as early as 328 B.C. for political purposes: Et populo visceratio data a M. Flavio in funere matris. Erant qui per speciem honorandæ parentis meritam mercedem populo solutam interpretarentur, quod eum die dicta ab ædilibus crimine stupratæ matris familiæ absolvissent. Data visceratio in præteritam iudicii gratiam honoris etiam ei causa fuit, tribunatuque plebei proximis comitiis absens petentibus præfertur.

against opposing candidates, which in case of condemnation would put them out of the way, or even in case of failure might discredit them and diminish their chances of success.[1] The administration of law was thus degraded to serve the rival ambition of political partisans, and unfortunately opportunities presented themselves often and easily for serving this purpose. Every Roman had the right of coming forward as a prosecutor, and few statesmen were so upright in their dealings or so fortunate that they offered no handle for an impeachment. Was not even Cato, the model of a true Roman of the old type, prosecuted no less than forty times? It was precisely in Cato's time that prosecutions of public men were in vogue, not for the purpose of punishing offences, but in order to gain political objects. We shall see, when we come to speak of this subject in detail, to what extent the administration of justice was interfered with and injured by suits of this kind.[2]

Dignity of Roman magistrates.

If we examine the position of the Roman magistrates in general, especially of the supreme magistrates, the consuls, and if we compare them with the magistrates of other republics of antiquity, we can fully understand how Polybius recognised in the Roman magistracy a monarchical element. They were distinguished from their fellow-citizens by the dignity and splendour that surrounded them, by an escort of official attendants, the consuls especially by the much-feared lictors. They had precedence in all public and private assemblies; through the auspices they were supposed to have constant communica-

[1] It seems that even during the progress of a criminal trial the accused was debarred from presenting himself as a candidate for election. This happened in the case of Catiline. Asconius in *Orat. in Toga Cand.* p. 89: Professus est Catilina petere se consulatum. L. Volcatius Tullius consul consilium publicum habuit, an rationem Catilinæ habere deberet, si peteret consulatum: nam quærebatur repetundarum. Catilina ob eam rem destitit a petitione. So also M'. Acilius Glabrio retired from his candidature for the censorship in 189 B.C., when a charge of embezzlement was brought against him by the party of the rival candidates. Liv. xxxvii. 57. See above, p. 92, n. 1.

[2] See below, chap. v.

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tion with the gods. Being presidents in the assemblies of the senate and the people in public festivals and games, they appeared especially as the men invested with the majesty of the Roman people. Their formal independence of the senate was more conspicuous than their actual dependence, and the latter they could cast off if they had the courage to do so. By their criminal jurisdiction they kept the citizens in awe, still more the soldiers through their military command. With regard to subjects and allies they were permitted to act almost entirely as they chose; they had the right to reward the soldiers, to distribute booty, and to give dispensation from service. They were responsible rather to their party than to the laws. The bare idea that the people as such and of their own accord should call a magistrate to account probably seemed preposterous to the Romans. The people were appealed to only when a member of a powerful party thought fit to venture on the impeachment of a magistrate. In ordinary times the political fluctuations on the surface did not disturb the popular masses in the depths below.

Legislative power of Roman magistrates.

One thing that contributed considerably to assure to the Roman magistracy a high position was the apparent freedom with which they determined the passing of new laws and changes in the constitution. Not only did they invariably make the proposals for all real acts of legislation, and not only were the laws called by their name, but a great number of administrative reforms—nay, of actual changes in the law and constitution—were accomplished by mere magisterial proclamations.[1] Thus the prætorial edicts developed the civil law; the censorial measures with regard to the census gradually reformed the constitution; and the consuls changed the military service and the organisation of the army. Naturally these innovations were usually discussed in the senate; they were far from being arbitrary acts of individual men, yet they plainly proved the power of the office in virtue

[1] By virtue of the *ius edicendi* possessed by the magistrates. See Lange, *Röm. Alterth.* i. p. 386. Mommsen, *Röm. Staatsr.* i. p. 151.

of which they were made. Camillus and, at a later time, Marius appeared to the people as reorganizers of the army; the censors Appius Claudius, Q. Fabius, and all the later ones who regulated the registration of citizens in the various tribes apparently effected their constitutional reforms merely by virtue of their official authority. Their measures as well as the edicts of the prætors had the force of law until they were altered or suspended by another magistrate at a later time. Thus the officials were the instruments by which continually and gradually public law was developed without the help of formal acts of legislature.[1]

Coercive powers of the magistrates.

This action of the officials will be discussed in the chapters dealing with the different departments of the administration. It will suffice for the present to say that the commanding position of the magistrates was in great measure due to their influence as important organs of legislation. These secondary means, however, were hardly necessary to clothe the Roman magistracy with dignity and to raise it far above the people, in spite of the short term of office to which it was restricted. The 'imperium,' the supreme military and judicial authority of the consuls and prætors, though limited by law within the precincts of the town, conferred a degree of power to which every citizen was obliged to yield. No common citizen could dream of bidding defiance or of eluding the orders of such magistrates; nay, the mere 'potestas' without the 'imperium,' with which the other magistrates were invested, conferred the right of imposing fines and punishing instantly every attempt at resistance. The lictors of the consuls, the attendants of the other magistrates were always ready to enforce not only obedience to their orders, but due attention to those marks of respect which were

[1] The edicts of the Roman magistrates were of wider scope and had far more the character of laws than the administrative rules determined by the chiefs of the different departments of state in modern times. They trenched upon the legislative powers of the popular assembly, whose law-making had nothing of the feverish assiduity of modern parliaments. Comp. Lange, *Röm. Alterth.* ii. p. 555.

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due from every citizen to the men invested with public authority.[1]

The auspices.

The power of the magistrates received additional strength from the fact that they were, as it was technically called, in the possession of the public auspices—*i.e.* that they had the right of communing with the gods for the purpose of obtaining the divine approval for all public acts. In this important function they were not dependent upon the goodwill of the priests, but made use of the priests as their servants without allowing them any independent action. It will be more clearly shown in the section treating of the religious institutions how this independence of the civil power served to effect a complete unity between state and religion, and to prevent every possibility of a dispute.[2] Thus the Roman magistracy, although not free from defects, was strongly organized to bear up the power of the state, and well qualified to uphold the laws within and to guarantee security from without.

[1] Compare Lange, *Röm. Alterth.* i. p. 588.

[2] The struggle between Church and State, which has been, and still is, so baneful in modern Europe, was unknown in Greece and Rome.

CHAPTER IV.

THE MILITARY ADMINISTRATION.

CHAP. IV.

Importance of the consular office.

THE consulship was always regarded as the highest office [1] in the Roman republic, and its chief duty was the command of the army in time of war. The protection of the citizens from external enemies was thus recognised as the first condition for the existence of the state. The consuls were looked upon as the true successors of the kings, and in the beginning of the republic wielded for limited periods the whole civil and military power which the kings had enjoyed for life. By degrees their sphere of action was narrowed, various branches being separated from it to be entrusted to special magistrates. After the establishment of the prætorship, in the year 366 B.C., the consuls were but rarely and exceptionally commissioned to act as judges, and only by especial decrees of the senate.[2] They never performed the official duties of the censors, ædiles, or quæstors. The simple form of the original constitution became more complicated by the multiplication of offices, whilst at the same time the Roman dominion expanded over subject territories. So it happened that what the consulship lost in variety of functions it gained amply in the greater importance of those that were left to it as the first magistracy of the ruling state of Italy.

Apart from the transfer of some parts of the administration to other magistrates, little was changed in the con-

[1] Hence the Greek designation, ὕπατοι, or chief magistrates, for the consuls, and the custom of using their names for the official notation of the year.

[2] Liv. xxxix. 14, 6: Patres quæstionem de Bacchanalibus sacrisque nocturnis extra ordinem consulibus mandant. See Mommsen, *Röm. Staatsrecht*, ii. p. 101.

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Military duties of the consuls.

stitutional functions of the consulship itself. It may safely be asserted that in no state in the world has any office undergone so few alterations during such a length of time. Next to the general administration military affairs engaged chiefly the attention of the consuls.[1] The continual wars scarcely allowed any interruption in their military duties, and as the theatre of war became further removed from Rome, and military operations assumed larger proportions, the position of the chief commanders necessarily became more independent than it had been during the short summer campaigns of the older time in Latium or Samnium. The consuls were more and more at liberty to determine the course of the war themselves, and it became more and more difficult for the home government—*i.e.* for the senate—to exercise any real superintendence or control over them. This became very perceptible as early as the wars with Carthage. Thus the two elder Scipios were in fact unrestricted in their military operations in Spain, and the conqueror of New Carthage could dare to oppose his will to that of the senate. This independence of the consuls increased during the wars in the East and during the later wars in Spain and Liguria. A Manlius undertook without permission a predatory campaign against the Galatians;[2] a Cassius attempted to penetrate into a province that was not assigned to him;[3] a Popilius Lænas, a Claudius, waged war against nations with whom they were commanded to keep at peace.[4] It is highly characteristic that in no single instance were the arbitrary proceedings of refractory generals punished, not even when a formal accusation was brought against them.

Inhumanity of Roman generals.

Besides this increasing self-will of the generals, they began to exhibit after the Hannibalic war a brutal disregard for the demands of humanity, nay, of the rights of nations and the honour of the Roman name. It is true,

[1] Polyb. vi. 12, 1: οἱ ὕπατοι . . . . πασῶν εἰσὶ κύριοι τῶν δημοσίων πράξεων. *Ib.* 5: περὶ πολέμου κατασκευῆς καὶ καθόλου τῆς ἐν ὑπαίθροις οἰκονομίας σχεδὸν αὐτοκράτορα τὴν ἐξουσίαν ἔχουσι.

[2] Vol. iii. p. 163. [3] Vol. iii. p. 224. [4] Vol. ii. pp. 202, 423.

the Romans could at no time boast of extraordinary clemency in their mode of carrying on war, although from time to time a touch of chivalric spirit may be traced in their actions; but ever since they began to regard themselves as the nation called upon to rule they accustomed themselves more and more to a shameful and revolting disregard of every restraint which a common feeling of humanity, honour, and duty has from time immemorial put upon the animal passions. It appeared to them just and proper that everything should be permitted in war. They therefore practised not only stratagem and deception, which have always been excused in war, but even perjury, falsehood, and cunning, accompanied with cruelty and a butcherlike brutality that makes us shudder. The Spanish wars in particular are full of shameful deeds which ought to have caused the national pride to blush. Public opinion in the old world, although less scrupulous than in modern times, could not justify such proceedings even in time of war; and in Rome, especially in the senate, the feeling of humanity often was roused to condemn such reckless abuse of power. The perpetrators of some of the worst misdeeds were exposed to violent attacks and accusations, but they invariably managed to escape unscathed; in fact, the home government proved incapable of so far controlling the military command of the generals as to compel them to an honourable and humane mode of warfare.

Military incapacity of Roman consuls.

In proportion as the disposition of the generals became more savage, their military incapacity increased. Year after year the brave Roman soldiers were led almost at random, to be surrounded by rude but warlike barbarians in forests or mountain passes, to be taken prisoners or to be butchered wholesale. The history of the Spanish, the Ligurian, and the Gallic wars, though coloured by party spirit in favour of individual families and of the Roman people, nevertheless exhibits so many disgraceful defeats that the final victory of the Romans can be explained only by the enormous disproportion between the

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Roman state and the small and isolated tribes of barbarians.

Decay of discipline.

The warlike spirit and discipline among the soldiers also decreased in proportion to the incapacity of the generals. The Italians, though originally possessed of fine military qualities, not unfrequently lost even their courage, the first and most important condition of success.[1] But as regards military spirit, discipline, order, subordination, and indifference to fatigue or privations, these virtues became so rare that every new general who was sent from Rome and who, like Scipio Æmilianus, recognised the importance of these things, was obliged to begin by reorganizing the army and accustoming the men to work, to march and to practise self-denial, order, and obedience.[2]

Liability of Roman citizens to military service.

The organization of the army was still based upon the same foundations which had come down to the republic from primeval times, and had been constantly adapted to times and circumstances. The most essential part of it was this, that every Roman citizen was liable to military service. This institution, it is true, was by no means peculiar to Rome. It was in principle the law of every ancient state. But the Romans organized this universal military service with particular care and skill; they carried it out strictly, and preserved it at a time when the Greeks had long given it up and were accustomed to employ mercenary troops. It has been repeatedly pointed out[3] that the superiority of the Romans over the Carthaginian mercenaries was owing to the fact that their armies were composed of citizens.

Paid and unpaid military service.

It is a striking proof of the natural aptitude of the Romans for military life that we find even in the earliest times the people organized as an army according to classes and centuries, by which means they contrived with much skill to adapt the military service to the different ranks and degrees of citizens.[4] This arrangement was made to suit a time when regular military pay was

[1] Vol. iii. p. 399.
[2] Vol. iii. p. 404.
[3] Vol. ii. pp. 110, 461.
[4] Vol. i. pp. 62, 68.

not yet known. As wealth began to increase, and as society became more artificial, it became necessary to devise means for rewarding the soldiers for their services. This gave rise to the introduction of military pay (400 B.C.), by which the difference of the five property classes in the army necessarily was made to vanish. From this time forward the organization of centuries remained only in use for regulating the voting in the *comitia centuriata*. It no longer corresponded with the actual arrangement of the army, and the latter underwent considerable changes.

Infantry and cavalry

The cavalry was now no longer formed out of the eighteen political centuries of knights, but of all those younger men indiscriminately who were fit for that kind of service, and it soon began to take a more important position in the army. The men were now heavily armed, whereas they had previously been light-armed.[1] They received three times the pay of the infantry, and were principally chosen from among the sons of wealthy families, because they were obliged to provide their own horses. As the care of these horses naturally devolved upon them also in time of peace, and as they therefore could not—like the foot-soldiers—retire from their profession after a campaign, they formed the beginning as it were of a standing army. To these horsemen were joined the knights of the old eighteen centuries of cavalry, who had in earlier times received a horse from the state (*equus publicus*) and money for its keep (*æs equestre*)—a custom which was now retained in form, though probably in form alone.[2] Among them were the young noblemen—the sons of magistrates and senators—who performed their military service in the

[1] Polybius, vi. 25, 3: *ὁ δὲ καθοπλισμὸς τῶν ἱππέων νῦν ἐστι παραπλήσιος τῷ τῶν Ἑλλήνων· τὸ δὲ παλαιὸν πρῶτον μὲν θώρακας οὐκ εἶχον, ἀλλ' ἐν περιζώμασιν ἐκινδύνευον.* This passage is of the greatest importance. It altogether disposes of the stories which represent the Roman knights of the earliest period as the principal and most effective part of the armies.

[2] The expressions *equum adimere, vende equum*, employed by the censors on the occasion of drawing up the lists of the equestrian order, had no more reference to actual horses than the 'acceptance of the stewardship of the Chiltern Hundreds,' professed by an English member of Parliament, has to that ancient and honourable office.

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cavalry, mostly as orderlies, or in the select body-guard of the generals. It is not probable that they furnished many effective horsemen for the ordinary cavalry of the legions, for it became customary by degrees that the members of the eighteen centuries should not quit them when they had reached an advanced age and could no longer perform actual service.[1]

Relative importance of these branches.

Thus the Roman cavalry in the period after the reform of the oldest military system—*i.e.* after Camillus—was made up of two distinct parts, the old knights of the eighteen centuries who received no pay, and the paid cavalry, who were chosen from among the more wealthy citizens, though there was as yet no regular *census equester* before the time of Gracchus. The value of this latter portion of the army in actual war must not be estimated very high. The strength of the legions always lay in the infantry, even after the cavalry had been heavily armed. The military history of Rome excludes all doubt on this score—at least, in those times of which we have trustworthy information. The Roman cavalry was not a match for either the Numidian, the Gallic, or the Thessalian horse; nor was it ever able to contribute materially to secure victory. The old stories about the heroic deeds of the knights in the battle of Lake Regillus and elsewhere are probably mere fictions. Another circumstance proving the inefficiency of the Roman cavalry is that the contingents of the allies were always far larger than those of Roman citizens.[2] It was not until it became general to

[1] This custom was probably introduced at an early date by *equites* who had served their time, and who, having no *centuriæ seniorum* assigned to them, continued to vote with the knights in actual service. In fact, there must at all times have been members of the *centuriæ equitum* forming a kind of reserve. This circumstance was the first step in the change from the military character of the equestrian body to mere voting centuries. The cavalry became more and more ineffective. Hence the motion of Cato to increase the number of centuries. See Cato's *Fragm.* ed Jordan, p. 66.

[2] The proportion of cavalry furnished respectively by the Romans and their Italian allies was not always uniformly the same. Sometimes the allies had to supply double, sometimes three times, the number of horse furnished by Roman citizens. The latter proportion may be considered the rule.

employ foreign—especially Gallic[1]—horse that the Roman armies were supplied with a cavalry not inferior to their infantry.

Insubordination of the horsemen.

The above-mentioned organization was not altogether favourable to military discipline. It was the horse that showed the first indications of a tendency to effeminacy, and among them the first traces became visible of cowardice and insubordination. The story of the young noblemen who, after the battle of Cannæ, discussed the plan of leaving Italy is perhaps a little exaggerated for the glorification of Publius Scipio, who is said to have frustrated this ignominious design.[2] But it is not a pure invention; and it shows to what extent the *élite* of the Roman cavalry had then degenerated from the true Roman spirit. This degeneracy had become apparent even in the first Punic war. In the year 252 B.C. the cavalry openly refused obedience when the consul Aurelius Cotta commanded them to work at entrenchments, so that he was obliged to appeal to Rome for the punishment of the refractory knights.[3] The sons of those men who became more and more conspicuous in the great mass of Roman citizens as a distinct class of rich merchants, speculators, and farmers of the public taxes, were a material too delicate to be employed as common cavalry soldiers. They occupied more and more a privileged position

[1] A corps of 600 Gallic horse is mentioned in the year 168 B.C., in the war with Perseus. Liv. xliv. 21, 7: Consul iussus est Cn. Servilio Galliam obtinenti provinciam literas mittere, ut sexcentos equites conscriberet.

[2] Vol. ii. p. 238.

[3] Frontinus, *Strateg.* iv. 1, 22: Aurelius Cotta consul cum ad opus equites necessitate cogente iussisset accedere eorumque pars detrectasset imperium, questus apud censores effecit, ut notarentur: a patribus deinde obtinuit, ne eis præterita æra procederent: tribuni quoque plebis de eadem re ad populum pertulerunt omniumque consensu stabilita disciplina est. Valerius Maximus (ii. 9, 7) completes this interesting account by telling us that the number of refractory knights amounted to 400, and that the punishment of the censors was their degradation to the 'ærarii.' What strikes us most in this extraordinary episode of Roman military life is this, that the imperium of the consul seems to have been inadequate to punish offences of this kind, and that it was necessary for him to appeal to the civil government at home, to the senate, the censors, and even to the tribunes of the people.

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like their comrades of the nobility who made up the eighteen centuries of knights; and the actual cavalry service was by degrees transferred to the allies and foreign auxiliaries. But it was Caius Gracchus who first organized the knights by a high census as a distinct class of citizens.[1] Up to this time the families of the rich citizens who were engaged in business but did not belong to the nobility never formed by law a special order. They were *de facto* a connecting link between the nobles, who were privileged to rule the state and forbidden by law and custom to carry on business, and the mass of small tradespeople, peasants, artisans, and labourers.

Qualifications for military service.

As in the cavalry so also in the infantry of the Roman legions, the old so-called Servian system of classes and centuries could not remain intact at the time when the introduction of pay had made it a matter of indifference whether a man, enlisted to serve as a soldier, was rich or poor. In the most prosperous period of the republic the old organization of the army was therefore obsolete. Instead of the five lines of the old phalanx, corresponding to the five classes of the Servian *comitia centuriata*, we find four classes of soldiers in the legion—the *velites*, or light-armed troops, and three divisions of heavy-armed men, called *hastati*, *principes*, and *triarii*. These four classes were selected on the ground of personal qualification, such as bodily strength and youth, without much regard to the amount of each man's property.[2] The old class

[1] There is no foundation for the assertion generally made, that the *ordo equester* as it existed in later times is older than the reform of Caius Gracchus. There was no equestrian census before that time. All that we hear is that the knights were taken from the wealthy families, but the line of demarcation between these families and the rest of the people was certainly not drawn before C. Gracchus.

[2] The *velites* were taken among the 'youngest and poorest,' according to Polybius, vi. 21, 7: διαλέγουσι τῶν ἀνδρῶν τοὺς μὲν νεωτάτους καὶ πενιχροτάτους εἰς τοὺς γροσφομάχους (*velites*)· τοὺς δ' ἑξῆς τούτοις εἰς τοὺς ἀστάτους καλουμένους· τοὺς δ' ἀκμαιοτάτους ταῖς ἡλικίαις εἰς τοὺς πρίγκιπας· τοὺς δὲ πρεσβυτάτους εἰς τοὺς ἀστάτους. Polybius further relates (*ib.* c. 23, 15) that the soldiers whose property amounted to more than 10,000 drachmæ wore chain armour instead of breastplates. These men of 10,000 drachmæ were citizens of the first class of the old Servian constitution. It appears, therefore, that in the

system was in so far maintained that the utterly poor and indigent were as much as possible excused from military service: a rule which, of course, could not be observed in times of distress. Poverty seems, on the whole, never to have constituted a legal claim to exemption from military service. A new law was therefore unnecessary when it was found advisable to demand the services of the lowest classes of the population.[1]

Character of the Roman army.

The detail of the army organization, including equipment, tactics, camp regulations, time of service, pay, military punishments and rewards, belongs to the department of Roman antiquities, and cannot be fully discussed in a political history.[2] It has already been said

time of Polybius the division of the people into classes which still subsisted for voting purposes, had not yet lost all connexion with the military organization. It is difficult to understand upon what principle the selection was made for the different classes of soldiers, if age, strength, and property were all taken into consideration at the same time. Some sort of compromise must have been made. Perhaps able-bodied men were ranged among the heavy-armed troops, even if they were too poor to provide themselves with the full equipment. If the first outlay was borne by the state, the price may have been deducted from the pay or the men's share of the booty.

[1] This explains the variations noticeable in different periods in the lowest property qualification required for actual military service—viz. 4,000 asses (Polyb. vi. 19, 2), 1,500 asses (Cicero, *De Rep.* ii. 22), and 375 asses (Gell. xvi. 10). The statement of Sallust (*Jug.* 86) that Marius in enlisting the *capite censi* deviated from the ancient custom is only partially correct. The *capite censi* were never exempt from military service, but they were generally passed over as inferior material for the army. When occasion required they were employed for naval service or for the formation of city legions (*legiones urbanæ*), which probably were a kind of reserve corps for the defence of Rome. In times of emergency, as, for instance, in the Hannibalic war, when even slaves were admitted, it is not likely that the *capite censi* were excused. Polybius expressly states (vi. 19, 3) that the citizens estimated below 400 drachmæ were employed *εἰς τὴν ναυτικὴν χρείαν· ἐὰν δέ ποτε κατεπείγῃ τὰ τῆς περιστάσεως ὀφείλουσι καὶ πέζῃ στρατεύειν εἴκοσι στρατείας ἐνιαυσίους.*

[2] The legions were raised 'tributim'—*i.e.* according to tribes, each tribe having to furnish an equal number of recruits. It may be worth while to inquire by what process the Romans adapted the contingent of every tribe, the number of which gradually rose from twenty-one to thirty-five, to the strength of the legion, which was not increased in proportion, but ranged only between 4,200 men and 5,000. It seems that this adaptation was possible only by a gradual diminution in the number of men forming one military century or company. The original number requisite to form a century was no doubt one hundred, as the name *centuria* implies. At the beginning of the republic, when the number of tribes was twenty-one, two such centuries of

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that the consistency and regularity with which the principle of universal compulsory service was carried out in Rome was one of the chief causes of the superiority of Rome over all the other states of antiquity.[1] The Roman armies were not formed of professional soldiers but of citizens. They were a militia force, disbanded every year to be reconstituted when required, and possessing no permanent staff of officers. However, the principle of universal compulsion to serve was not carried out quite rigorously, any more than it is in modern states. A selection among those required to serve is inevitable when, as is always the case, they cannot all be enlisted; and thus it happened that some citizens liable to serve were more often found in the ranks than others. War has especial attractions for some. Hence a large number of volunteers presented themselves for the Roman armies, especially when there was a prospect of booty.[2] The Han-

one hundred each taken from each tribe would form a legion of 4,200 men. This was the normal strength of the legion. For more than one hundred years, until 387 B.C., the number of tribes remained stationary, and the strength of the legion likewise. Then four new tribes were added. Thus the legion rose to 5,000, the same number of full centuries, or 200 men, being raised from each tribe. Livy says, viii. 8, 14: Scribebantur autem quatuor fere legiones quinis millibus peditum. The tribes were gradually increased to twenty-seven, twenty-nine, thirty-one, thirty-three, and finally to thirty-five in 241 B.C. If the government had gone on raising 200 men from every tribe, the strength of the legion would have swelled at last to 7,000 men. This was avoided by diminishing the number of recruits levied from each tribe. Finally, as it seems, the original strength of the legion of 4,200 men was restored (Polyb. vii. 20, 8), and at the same time the strength of the century o company was fixed at sixty men. Two companies of sixty men, or 120 men, from each of the thirty-five tribes would produce a legion of 4,200 men, a proportion which suited the strength of the legion and the number of tribes. It seems not unlikely that the reduction of the century from one hundred to sixty was made gradually to suit the increasing number of tribes.

[1] It is clear that a slave-holding state can more easily carry out the principle of universal military service than a community of freemen alone. Slaves not being allowed to carry arms would in time of war continue their peaceful occupations, raise food, and supply the necessary articles of consumption. The states of antiquity, which were all slave states, therefore enforced the principle of compulsory service only so far as the free citizens were concerned. They knew nothing of public duties or public privileges which included all human beings alike.

[2] Liv. xxxi. 8; xxxii. 9, 1; xxxvii. 4, 3. Vol. iii. p. 26.

nibalic war and the service in the provinces, which lasted for several years, especially in Spain, could not fail to estrange a portion of the citizens from their peaceable occupations, and to bind them permanently to the adventurous career of soldiers. Thus we find that favourite leaders could without difficulty induce numbers of volunteers to continue their service beyond the time prescribed by law.[1] Cohorts of veterans and prætorian guards were formed and constituted select bodies, distinct from the regular legions.[2] Thus the beginning was made for the formation of standing armies, such as those with which the civil wars were waged, and which at a later time formed the military strength of the Empire.

Term of military service.

But it was not always by their own free will that the soldiers continued to serve beyond the legal time. As early as the first war in Sicily they had been compelled to remain longer; and this kind of compulsion was again resorted to and applied on a larger scale the further the theatre of war was removed from home and the longer the wars lasted, as was especially the case in Spain. In that country Romans and Italians grew old in arms; they sometimes settled there and married Spanish wives, and their descendants were a half-Roman population. This was the origin of the municipium of Italica and of Carteia, which were the first Italian settlements beyond the confines of Italy.[3] But the troops compelled to remain so long in active service sometimes became discontented, and military discipline was thereby seriously endangered. An instance of this occurred in the year 180 B.C., when it was found necessary to allow the prætor Q. Fulvius Flaccus to bring the veterans back from Spain

[1] This was done by P. Cornelius Scipio when he accompanied his brother Lucius as legate to the Syrian war. Vol. iii. p. 136.

[2] The first of whom this is reported is the younger Scipio Africanus. Paullus Diac., s. v. '*Prætoria cohors.*' Appian, *Hisp.* 84. Such soldiers received sixfold pay.

[3] Appian, *Hisp.* 38. This municipium of Italica on the Bætis, in the neighbourhood of the modern Seville, became afterwards famous as the birthplace of both Trajan and Hadrian. The settlement of Carteia received the rights of a Latin colony in 171 B.C. Liv. xliii. 3.

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to Rome. It seemed that the troops would not submit to be kept any longer in the province.[1]

Officers of the legions.

Military service must have assumed the character of a profession sooner among the officers than among the common soldiers. A man could be qualified for a post of command only by serving some length of time. An able legionary tribune would be sure of being re-elected when new armies were formed.[2] This was likewise the case with the centurions. These two classes of officers of inferior rank occupied a position in the army similar to that of the clerks (*scribæ publici*) of the magistrates in what may be called the civil service. They were well versed in the technical part of military duty, and without the assistance of such subalterns the generals could no more have undertaken the supreme command in the field than the magistrates could have conducted the administration in peace without a staff of well-drilled clerks. As we have already seen, and as appears from the nature of the case, the cavalry assumed the character of a standing army even before the infantry. It takes a longer time for a horseman than for a foot-soldier to learn the service; and a cavalry horse once trained must of course be continually looked after and kept in serviceable condition, a task which can be best performed by its own rider.

Composition of the legions.

Thus circumstances contributed on all sides to the formation of a distinct military class, more or less separated from the generality of the citizens who were engaged in peaceable pursuits. But it was a principle strictly adhered to in the good time of the republic that the Roman legions should consist only of Roman citizens and Italian allies (*socii*). No troops were allowed to be

[1] Liv. xl. 35. The messengers of Flaccus reported to the senate that it was absolutely necessary to let the army return from Spain: ita enim obstinatos esse milites, ut non ultra retineri posse in provincia viderentur, iniussuque abituri inde essent, si non dimitterentur, aut in perniciosam, si quis impense retineret, seditionem exarsuri. *Ib.* c. 36.

[2] On the election of military tribunes see Becker-Marquardt, *Röm. Alterth.* iii. 2, p. 276.

levied in the provinces. However, in times of distress this principle was sometimes disregarded, and during the Hannibalic war we find frequent mention of irregular troops, raised beyond Italy, and according to no fixed, acknowledged rules, but as circumstances permitted and dictated.[1] Such troops may have been employed more often than it would appear from the scanty mention of the historians; but the relations of the provincials to Rome would have been entirely altered if they had been called upon to furnish troops regularly. As a rule, they were excluded from military service, and thus they remained weak and spiritless subjects, void of the feeling of dignity and self-respect.

Irregular forces.

A striking anomaly in the military system of the Romans, which was, on the whole, so strictly regulated, was exhibited by the corps of irregulars formed as early as the Hannibalic war, by commanders enjoying local influence and popularity. Thus the farmer of taxes T. Pomponius Veientanus, in the year 213 B.C., waged war against Hannibal, in Bruttium, with an army collected by himself;[2] and P. Scipio completed his forces (205 B.C.) by about seven thousand volunteers, composed of Umbrians, Sabines, and other Italians. The town of Camerinum alone sent him a cohort of six hundred men; and other towns voluntarily contributed provisions, arms, and materials for fitting out the fleet.[3] This manner of obtaining armies and military stores is either a sign of great distress or an indication of the decline of a state. In Rome it was the former. At a later period, in the civil wars, ambitious leaders followed the example set them by the patriots of old, and collected armies willing to obey them alone personally, without regard to the constituted authorities.

[1] Such irregulars are called 'tumultuarii milites,' because they were raised in case of panic (*tumultus*) or sudden alarm and danger. Liv. xxxvi. 2, 7: Si tumultus in Hispania esset, placere tumultuarios milites extra Italiam scribi a prætore. Liv. xxxv. 23, 8; xxxvii. 2, 8.

[2] Vol. ii. p. 318.

[3] Vol. ii. p. 418.

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The Roman navy.

If, in the earlier ages of her history, Rome appears as a great military power by land, this is easily explained. The Romans were not a trading nation; the city of Rome was not a seaport; the entire strength of the young republic was directed against its enemies on the Italian continent, not against any insular or maritime state. But the case was altered in the war for the possession of Sicily, which was waged against the first naval power in the world. Now the Romans were obliged to venture on an element with which they were naturally not familiar. They did so with great resolution and with great success. But although all the wars that followed required a further development of the naval power, we cannot fail to observe that after the termination of the first Punic war less attention was bestowed upon naval matters, and that the Roman fleets shrank, in numbers and size of ships as well as in efficiency, almost in the same proportion as the power of Rome grew more imposing. The naval battles in the first Punic war, the gigantic armaments employed, and their astonishing successes, have no parallel in the ensuing wars with Carthage, with the Illyrians, with Macedonia, with the Greeks, and the Syrians.[1] Nay, more; Rome did not even know how to establish an effective maritime police. Piracy flourished.[2] The communication between Rome and the provinces became so insecure that the transport of provisions and materials of war to the armies beyond the sea was often interrupted, and the Roman troops were obliged to undertake long and fatiguing marches instead of being conveyed to their destination by the shortest sea-route.[3] One would have expected that Rome in extending her dominion beyond Italy would have recognised the advantages of a powerful maritime force. Italy lies in the very centre of

[1] Vol. iii. p. 78.

[2] As early as 181 B.C. the towns of Tarentum, Brundusium, and even Massilia complained of the depredations of pirates. Liv. xl. 18, 4.

[3] Vol. iii. p. 167.

the large basin the coasts of which formed her territory. Separated by the range of the Alps from the remainder of the continent, she, in point of fact, almost enjoys the advantages of an insular position. But it was impossible to make full use of these advantages, because the naval power was not fully developed.

Roman dislike of the sea.

The cause of this strange phenomenon must be sought for, in the first place, in the antipathy of the Italians for the sea. Whilst the Phœnicians and Greeks felt at home on the unsteady element, the Romans never ceased to have a kind of internal horror of the dangers of the ocean. Old Cato expresses probably not his own opinion only, but that of the majority of his countrymen, when he regrets ever having undertaken a voyage to a place that he could have reached by land. Horace [1] expresses a similar feeling in describing the first navigator as something like a madman or a superhuman Titan. We may rest assured that the majority of the Roman soldiers and generals shared this feeling and detested the naval service. The great numbers of deserters which the victorious Romans frequently compelled the Carthaginians and others to deliver up to them consisted chiefly of Italians who had been compelled to serve on board the fleet.

Roman fleets.

As a result of this dislike for everything connected with naval affairs, we meet with the strange fact that the Romans burnt the hostile ships that fell into their hands, instead of employing them in their own service. Even on the first opportunity which they had for getting possession of a fleet, on the capture of Antium, the ships of the Volscians were not taken to Rome. Their 'rostra' alone were brought home to decorate the orator's platform; and the harbour of Antium was neglected.[2] After the victorious termination of the Hannibalic war, the Carthaginian fleet was burnt in the same manner. The Romans consequently did not think it necessary to have regular officers for naval service. Instead of appointing com-

[1] Horat. *Od.* I. iii. 9.

[2] Vol. i. p. 368.

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manders of the fleet (*duumviri navales*) annually, they treated this post as an extraordinary one,[1] and the ships when they were no longer required, together with the harbours, wharves, and all appurtenances, were left to decay.

Decay of Roman fleets.

This gradual decline which we notice in the efficiency of the Roman navy is a corroboration of the conjecture made in a former volume,[2] that the astonishing success of the naval power of Rome in the first Punic war was due principally to the aid rendered by the ships of the Italian and Sicilian Greeks. In proportion as the Greek towns in those parts lost their old wealth and prosperity, the Roman navy became more and more insignificant. As the Romans had no inclination or ability for maritime affairs, the decay of the fleet could only have been prevented if they had continued to employ conquered or allied maritime communities to form the bulk of their fleets, as they had done until the end of the first Punic war. But with regard to the provinces beyond Italy, Rome observed a course of practice fundamentally different from that which was followed with respect to the so-called Italian allies. The provincials were not entrusted with arms. They paid tribute instead of serving in the Roman armies.[3] In Sicily, Africa, Gaul, and Spain, the Roman senate did not like to have subjects possessing ships of war, and able to use them, any more than they would entrust them with the privilege of serving in the legions or forming legions of their own. The same jealousy that caused the statesmen of Rome to decree the destruction of Syracuse, Carthage, and Corinth, would not allow a new naval power to spring up in any of these places.

Roman naval finance.

Lastly, the bad administration of the Roman finances probably had a share in the decay of the fleet. An efficient naval establishment could have been maintained only at

[1] Only occasionally *duumviri navales* were elected—for instance, in 181 B.C. Liv. xl. 18, 7.

[2] Vol. ii. p. 61.

[3] See below, chap. x.

very considerable annual expense for ships, crews, and harbours. The Roman financial system was too rude and too primitive to furnish the means for such an additional expense, even if the ruling families had been less wasteful in the application of the public property for their own advantage. The Romans, therefore, when they required ships, adopted various expedients suggested by the emergency. New ships were built, old ships were repaired, or the allies were compelled to furnish ships; but these hasty contrivances often were insufficient and caused great inconvenience and even humiliating disasters. Thus matters continued through the whole of this and the following period, rather growing worse than better, so that at length, in the time of Cæsar and Pompeius, the pirates had almost unlimited command of the Mediterranean.

Roman roads.

The care of public roads may be considered a branch of the military administration. The great highways which, starting from Rome as their central point, traversed the whole of Italy in all directions, were made in the first place, not for the convenience of trade or social intercommunications, but for purposes of war. No place could be considered as conquered and firmly united with Rome as long as it was not easily accessible to the legions. Hence the conquest of Campania was followed by the construction of the Appian road to Capua; the subjection of Samnium, by the continuation of this road as far as Brundusium; and the extermination of the Senones and the colonisation of their territory, by the making of the Flaminian road. The Romans were the first nation of antiquity that recognised the importance of good roads for the government of a large empire. The magnificence of their achievements in this department has been equalled and surpassed only by the great engineering works, the railways, bridges, tunnels, and viaducts, of our own time. It is characteristic of the different direction taken by the political and national development of the Greeks and Romans, that the former devoted all their attention to the navy, and neglected the roads by land, whereas the

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latter avoided the sea whenever it was possible, and created those magnificent roads which, though constructed in the first instance for military purposes, could not fail to be of great advantage in furthering peaceable intercourse.

CHAPTER V.

THE ADMINISTRATION OF JUSTICE.

Objects of civil order.

THE maintenance of right and peaceful order in the daily intercourse of the members of a community; the removal and, if possible, the prevention of violence employed by one man against his neighbour; the protection of life and property from the internal enemies of society—this, together with the defence from external enemies, is the object for which every civil order of men has been first established, and to secure which men submit to restrictions and sacrifices of personal liberty which the organism of every state requires. As the military power is set up to secure protection from external aggression, and armies march out to meet foreign foes, so the sword of justice is entrusted to civil magistrates to preserve internal peace and to restrain those members of the community who violate it. The magistrates are furnished with sufficient power to assert the common feeling of justice, to resent all defiance of it, and to settle all disputes and differences of opinion among citizens; so that violence, force, and self-defence, which would be war on a small scale, are prevented. It is as necessary for a state to have its organization for internal jurisdiction as it is to have a military system to secure its independence from without; nay, the former is of the two the more essential element.

Extent of the Roman *imperium*.

These two functions of civil authority were originally designed for one end—a fact which was distinctly expressed in Rome by the circumstance that the supreme authority of the magistrates, the *imperium*, embraced not only the military but also the judicial power over the citizens. By virtue of the imperium a magistrate issued

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commands to the army, and by virtue of the imperium he sat in judgment over his fellow-citizens. Even the kings were military commanders and judges in one person, and after them the consuls likewise. In the name of the people they fought against the external as well as the internal enemies of society, both of whom were designated as *perduelles*. This was perceptible even in the outward form of procedure. The people were conducted to battle against either foe drawn up in the form of an army; for at home the assembly of centuries, at the request of a prosecutor, judged the disturbers of internal peace, and in the field it constituted the armed force of the state.

Functions of prætors and consuls.

By the establishment of the prætorship (366 B.C.), the office of chief judge was separated as a distinct magistracy from the consulship.[1] Thus, as the organism of the state was developed by degrees, the two principal branches of the executive, formerly united, became distinct. We are informed that in the earlier period of the republic the chief magistrates were called not consuls but prætors.[2] On the establishment of the new office it retained the old name of prætorship, and the chief magistrates were henceforth designated as consuls. The prætors, however, were

[1] There can be no doubt that the dictator was competent to act as chief judge. Being invested with the imperium, he had of course the supreme military jurisdiction. By virtue of it he could not only punish all those who were placed under his command for insubordination, as Papirius Cursor did Fabius (vol. i. p. 389), but also other citizens whom he judged to be guilty of *perduellio*, as Cincinnatus did Spurius Mælius (vol. i. p. 216). No cases are reported to show that the dictators also exercised civil jurisdiction. But this is explained from the fact that the historians only related cases of general interest, when the dictatorship was resorted to in times of great public dangers. Mommsen (*Röm. Staatsrecht*, i. p. 112) thinks that the purely military magistrates never had civil jurisdiction.

[2] Zonaras, vii. 19: τότε (449 B.C.) λέγεται πρῶτον ὑπάτους αὐτοὺς προαγορευθῆναι, στρατηγοὺς καλουμένους τὸ πρότερον. Liv. iii. 55, 12: Iis temporibus nondum consulem iudicem, sed prætorem appellari mos erat. In the ancient law which required the *prætor maximus* to fix a nail every year in the wall of the temple of Jupiter (Liv. vii. 3, 5), the name *prætor maximus* designates the dictator, as chief military commander. In fact *prætor*, contracted from *præ-itor*, means nothing else. From it are derived the names of the *porta prætoria* of the Roman camp and of the *cohors prætoria*. See Mommsen, *Röm. Staatsr.* ii. 1, p. 70. Becker, *Röm. Alterth.* ii. 2, 89.

far from engrossing the administration of law entirely. Every magistrate continued within the range of his functions to exercise the judicial authority necessary to enforce his administrative decrees, and he was bound to see to the execution of those laws and regulations which came under the control of his department. For this purpose every magistrate was empowered to impose punishments and to enforce obedience to the orders which he issued in accordance with the established laws, and with a view to securing their execution. Thus the consuls continued to exercise military jurisdiction over the soldiers in the field, the ædiles took measures against those offenders who violated the police regulations with regard to markets and public domains. But the superintendence of ordinary, civil jurisdiction was after 366 B.C. in the hands of the prætors, and they are to be looked upon as the magistrates who gave a voice, reality and life to all existing laws, written as well as unwritten.

The plebeians and the prætorship.

When the prætorship was established (366 B.C.) the consuls naturally ceased to exercise the functions of judges, at least in the department of civil law; military law, of course, was not affected by the change. It was the intention of the patricians that the plebeians who could now be elected to the consulship should remain excluded from the jurisdiction, and it was to gain this end that the prætorship was established. The exclusion of the plebeians from judicial functions continued for a whole generation till 337 B.C.; but though there seemed now to be no reason for reserving judicial authority to the prætorship, the division of military and judicial functions between the consuls and the prætors which had become a custom during the preceding period, from 366 to 337 B.C., remained permanent.

The insignia and business of the prætors.

By the establishment of the prætorship the department of justice had become independent of the general political and military administration. Nevertheless the original unity of the prætorship and the consulship can still be traced in many respects. The prætor was always

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looked upon as the colleague of the consuls.[1] He was elected in the same manner as the consuls by centuriate comitia, and, moreover, under the same auspices. He was furnished with the imperium, had lictors and fasces.[2] He represented the consuls in town by assembling the senate, conducting its proceedings, executing its decrees, receiving the reports of officers employed abroad, and laying them before the senate, by negotiating with the ambassadors of foreign states, and by summoning assemblies of the tribes, not only for the election of inferior magistrates, but also for purposes of legislation. The superintendence of religious festivals was also entrusted to the prætor as well as the duty of watching over the purity of religion, a duty which one would think ought to have been entirely in the hands of the pontifices.[3] Lastly, the prætor also sometimes undertook the conscription of recruits, and was entrusted, like the consuls, with military commands.

Numbers of the prætors.

Up to the time of the first Punic war one prætor only was annually elected. Then a second was added to conduct the jurisdiction between citizens and foreigners.[4] A distinction was now made between the city prætor (*prætor urbanus*), who was always looked upon as having a higher dignity, and the foreign prætor (*prætor peregrinus*). On

[1] The prætor was considered to be the colleague—though of lesser rank (*collega minor*)—of the consuls. Gellius, xiii. 15, quoting Messala's words: Prætor, etsi collega consulis est, etc. . . . quia imperium minus prætor, maius habet consul. The prætor could act for the consul, but not in all matters: for instance, he could not conduct the elections in the comitia centuriata.

[2] The number of fasces which the prætors were entitled to exhibit was six, whence the Greek designation of the office, ἑξαπέλεκυς ἀρχή, is derived. This number was restricted to two within the precincts of the city by a Lex Plætoria. See Becker, *Röm. Alt.* ii. 2, p. 188. Mommsen, *Röm. Staatsr.* i. p. 305.

[3] Compare the burning of the pretended books of Numa by the prætor Petillius, 181 B.C. Vol. i. p. 33.

[4] Liv. ep. 19: Duo prætores tum primum creati sunt. Pomponius, *De Orig. Iur.* 28: Post aliquot deinde annos, non sufficiente eo prætore, quod multa turba etiam peregrinorum in civitatem veniret, creatus est alius prætor, qui peregrinus appellatus est ab eo, quod plerumque inter peregrinos ius dicebat. The title *prætor peregrinus* was a contraction of the fuller designation first in use: Prætor qui inter cives et peregrinos ius dicit. Mommsen, *R. Staatsr.* ii. p. 178.

the final establishment of the two provinces of Sicily and Sardinia, probably 227 B.C., two new prætors were appointed to superintend the regular government of those provinces, and still later on two more were added for the two provinces of Spain. The number of annual prætors now amounted to six, and so it remained until the legislation of Sulla.

The prætors and private judges.

As the prætors had not alone the functions of chief judges, but shared with the consuls all the higher branches of the administration, a twofold difficulty arose, which, if the judicial system of the Romans had at all resembled ours, would have made them unfit to preside over the administration of justice. The multiplicity of various administrative duties would have absorbed too much of their time, and it might have made it hard for them to preserve that independence and impartiality which befit the judicial character. The Romans grappled with both these difficulties in a most effective manner; they left to the judicial magistrate merely the task of expressing in the technical language of the law the questions at issue between the litigants. The case was then tried and determined, not before the prætor, but before private judges nominated by him with the assent of both parties. There was a great advantage in this division of the legal proceedings in two parts—those that were carried on before the prætor (*in iure*), and those that took place before the actual judge (*in iudicio.*) On the one hand, it secured to the proceedings judicial accuracy and precision, for the prætor, in determining the form of the suit, took care that the technicalities required by the law were observed; and, on the other hand, by employing non-professional men as judges, it preserved a constant agreement between the judicial decision and the popular standard of substantial justice. Thus ample provision was made for freedom of action within fixed rules of the law, and for obtaining formal as well as substantial justice.

Prætorial formulæ.

In the earlier ages of the republic, legal actions could be brought only in certain prescribed forms called *legis*

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actiones, which, in accordance with the simplicity of the time, were few in number and bald and jejune in expression. The parties to a suit were obliged to appear before the magistrate and to set forth their claims in the words prescribed by the law for each particular case. By this means each suit was cast in a legal form fixed beforehand, and often little in accordance with the demand of the plaintiff. It was then handed over by the magistrate to the decision of a private judge. In course of time more freedom was applied to the procedure by the *lex Æbutia*,[1] which allowed the magistrates to use a greater amount of discretion in determining the precise form of the suits. Having heard both parties, the prætor now drew up his instructions, in which the point at issue between the parties was clearly stated, and a private judge was appointed to decide the question of fact. These instructions were called *formulæ*.[2] In the drawing-up of them, the Roman prætors exercised an influence upon the development of the law, the importance of which can hardly be overrated. They were always the living interpreters of the feeling of justice prevailing among the people, and by this feeling they were guided in framing the *formulæ*. It was a consequence of this practice that every new prætor on entering upon office made known by means of a public announcement the *formulæ* which he would employ in his court. As successive prætors did not usually establish new principles unless there was urgent reason for it, a permanent code was formed in this manner, not by formal legislation,[3] but by the magistrates in the course of their

[1] Gaius, iv. 30: Legis actiones paulatim, in odium venerunt. Itaque per legem Æbutiam et duas Iulias sublatæ sunt istæ legis actiones, effectumque est, ut per concepta verba, i.e. per formulas, litigaremus. At what time the Lex Æbutia was passed is not known.

[2] Bethmann-Hollweg, *Civilprozess*, p. 16: The formula is a written instruction of the prætor to the judex, in which the legal question forming the subject of the suit is precisely set forth along with the general principle of law bearing upon it, and in which the judex is requested to give his decision after due inquiry into the facts—'si paret, condemna; si non paret, absolve.'

[3] From the time of the decemvirs downwards, who compiled the laws of the twelve tables, no comprehensive act of legislation for the civil law took

official duties. It is to this free, continual and natural growth that the civil law of the Romans principally owes its high degree of perfection.[1]

Proceedings *in iudicio.*

The separation of judicial proceedings into the introductory transactions before the magistrate (*in iure*) and the material investigations with examination of witnesses, and regular pleadings before the actual judge (*in iudicio*), brought with it this great advantage, in addition to lightening the task of the prætor, that the civil jurisdiction was practised not exclusively by a special class of lawyers, but by unprofessional men. In the more important cases senators were chosen as judges.[2] Matters of minor importance, especially those connected with wills and bequests, probably came before the judges of the old centumviral court,[3] which appears to have been of plebeian origin.

place. The laws enacted in the legislative assemblies of the people were directed in the first instance to the reform of public law, and affected the private rights of individuals only in an indirect manner.

[1] There is some analogy between the growth of the Roman civil law and that of the common law of England. Both emanate from the law courts, and not from legislative assemblies; both are judge-made laws. But whereas the English decisions furnish only the material from which the legal principles must be evolved, the prætorian edicts contained in the *formulæ* authoritative enunciations of these principles.

[2] Polyb. vi. 17, 7: *ἐκ ταύτης* [*τῆς συγκλήτου*] *ἀποδίδονται κριταὶ τῶν πλείστων καὶ τῶν δημοσίων καὶ τῶν ἰδιωτικῶν συναλλαγμάτων, ὅσα μέγεθος ἔχει τῶν ἐγκλημάτων.*

[3] It is not known when the centumviral court was first established. Niebuhr ascribes it to the period of Servius Tullius, a view which we may adopt with the understanding that the origin of the court belongs to a prehistoric period. It seems that the number of one hundred judges must have been chosen with reference to the twenty tribes existing in the regal period, so that five members of the court were taken from each tribe. At a later time the court, though called centumviral, numbered, not 100, but 105 members. This addition of five members can be explained, like the increase of the legion from 4,000 to 4,200 (above, p. 107, n. 2), by the addition of the twenty-first tribe in the beginning of the republic (495 B.C.). These numbers (105 for the centumvirs and 4,200 for the legion) remained unaltered so long (from 495 to 387 B.C.) that when new tribes were added, no corresponding change was made in the constitution either of the court or the legion. Probably the number of judges taken from some of the tribes was reduced. When the tribes had reached the final maximum number of thirty-five, in 241 B.C., it was easy to bring about an agreement between the strength of the centumviral court (105) and the number

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Civil Law.

Civil law and the forms of civil law procedure, however important they are to the material welfare of a people, do not much affect its political history. The settling of disputed claims in private life is generally accomplished with so little noise that no commotion on the surface of political life is produced by the legal disputes of private citizens with one another. At any rate no direct, material influence upon the policy of a nation or the fortunes of a community can be traced to such disputes, and for this reason political history rarely has occasion to devote any attention to them.

Criminal law.

The case is different with regard to criminal law and criminal procedure. In the case of the forcible violation of a right, of premeditated attacks upon health, property, or even life, an amicable settlement of the dispute, or submission to an umpire, is generally quite inadmissible or impossible. In addition to this, the questions here do not usually turn on justifying or rejecting an alleged legal claim, but the object is the expiation and punishment of offences. The right of inflicting punishment is one of those which form the basis of every political organization. The manner in which it is developed marks the degree of civilisation of a people and of an age, and the phases through which it passes correspond with the phases of political life in general, and are therefore of great importance to the historian.

Law and religion.

At the time when the Romans first appear in history as a nation distinct from others, they had already passed the period of blood-vengeance [1] and family feuds. So imperfect are the historical traditions of the Romans that even the very memory of the prehistoric existence of these practices has been lost. On the other hand, there are unmis-

of the thirty-five tribes. The court could be formed by a contingent of three being furnished by each tribe. Comp. Mommsen, *Röm. Gesch.* ii. 365.

[1] Blood-vengeance (*Blutrache*), or the demand that blood spilled by violence must be expiated by the spilling of blood, and that the duty of exacting punishment devolves upon the relatives of the injured man, seems to have been general in all rude societies, and to have preceded the establishment of public justice executed by the authority of the state.

takable signs of a time preceding the establishment of full state authority, a time when peace was maintained among the different families only under the sanction of religion, and when acts of violence were repressed only by punishments supposed to be inflicted by the gods. Offenders were at that time regarded as enemies of the divine will, and therefore threatened with the wrath of the gods and excluded from the religious community until they had performed those acts of atonement which the priests, as the interpreters of the divine law, demanded.[1] Step by step this divine law yielded to the prevalence of temporal law: the political magistrate was substituted for the priest, the popular assembly for the religious congregation, corporal and capital punishment for the expiatory sacrifice.

The appeal to the people.

The first phase in the growth of law, in which divine law predominates, must be assigned in Rome to the prehistoric period.[2] It was not until the king exchanged his original quality of priest for that of a ruler, and had assumed military authority, that temporal law obtained a commanding position. The priest then remained master only in the distinct department of religious law; but the popular assembly, headed by the temporal magistrate, judged from this time forward those of its members who had broken the common peace. The magistrates were very properly not allowed to exercise any unlimited or arbitrary power over the lives and property of citizens. The Valerian laws in the very beginning of the republic, by giving the right of appeal from the sentence of the consul

[1] The life of the offender was declared forfeit to the gods by the *sacratio capitis*; he himself became *sacer* ('tabooed,' in the language of the South Sea islanders), was excluded from the religious community by the *interdictio ignis et aquæ*, the refusal of fire and water for religious uses. A *lex sacrata* is a law which is sanctioned and enforced, not by a civil authority, but by a religious community with oaths and an appeal to the gods. Such laws are older than the laws made by political legislatures. They originated in a state of society in which men as yet acknowledged only religious obligations, and had not established the supremacy of a state authority. For the same reason international treaties are sanctioned by oaths and religious ceremonies, and are placed in the keeping of the gods.

[2] Compare the author's *Early Rome*, chaps. vi. and vii.

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to the people, secured to the latter the privilege of deciding in the last instance on life and death. Henceforward the action of the magistrates was limited to the duty of convincing the people of the guilt of a criminal, and of obtaining the consent of the people to a preliminary sentence pronounced by themselves. The magistrates were therefore not so much judges as public prosecutors, and the judicial power was in the hands of the people. The right of punishment held by magistrates was gradually still more diminished, and the accused were allowed to appeal to the people, not only from sentences of death, but also of fines and imprisonment. The Valerian laws were repeatedly renewed [1] and extended, and the Porcian laws,[2] drawn up in the same spirit, gave further guarantees for the safety of the citizens from arbitrary punishments by the magistrates.

Practical restrictions on appeal.

Thus, whilst in Rome civil disputes were decided before the magistrates and private judges, the criminal jurisdiction was in the hands of the people. But not every violation of law could well be judged by a popular assembly. The whole body of the Roman people could not conveniently be assembled to try every trifling offence. It was only for the most important decisions, above all for those of a political nature, that the ponderous machinery of the *comitia centuriata* could be set in motion.[3] For minor offences and misdemeanours the general[4] power intrusted to the chief magistrates or their deputies, the quæstors,[5] sufficed, and abuse of appeal to the people was

[1] Vol. i. pp. 128, 204. Such a renewal was the law of C. Gracchus: Ne de capite civium Romanorum iniussu populi iudicaretur. Cicero, *P. Rab. Perd.* 4.

[2] Cicero, *De Rep.* ii. 31.

[3] Even political trials in the popular assemblies can never have been frequent. In the whole course of the fifth century of the city not a single instance is mentioned of a case tried in the *comitia centuriata.*

[4] All minor offences of a private character for which no heavier punishment than a fine of a maximum amount fixed by law was imposed the magistrates judged of their own authority, no appeal to the people being permitted.

[5] The chief magistrates, the consuls, and afterwards the prætors, just as the kings of old, seem to have avoided trying in their own persons offences of

guarded against, not only by the possible refusal of the magistrate to allow such an appeal, if it were frivolous,[1] but also by the refusal of a colleague or tribune of the people to intercede against a judicial decision, or by the further refusal of a magistrate to allow a popular assembly to be called for the purpose of appeal.[2] We must not therefore imagine that the Roman popular assembly was often called together to act as a court of justice. The Roman citizens had ample leisure to attend to their private affairs. At any rate, the Roman state laid no such immoderate claims to their judicial functions as that of Athens.

Political offences.

Besides this, we must remember that during the whole time of the republic every *pater familias* continued to exercise in his family the *patria potestas*; that the members of each family formed a kind of family court; and that the offences of slaves were punished by their masters and not by public magistrates. It was therefore principally to

a capital character, and giving decisions from which an appeal lay to the people. An acquittal by the people could not fail to be derogatory to their authority. For this reason special judges (*quæstores*) were appointed to act as their deputies. These quæstores, dating from the regal period, were nominated up to 449 B.C. by the consuls themselves. At that time they were first elected by the people and invested with the character of treasury officers, whereby their jurisdiction was chiefly directed to the prosecution of the offences of embezzlement of public money, of defalcation or evasions of payment due to the exchequer. When occasion required, the original character and office of the criminal quæstors were revived. So Sp. Cassius, M. Volscius and Camillus were prosecuted by quæstors (Cicero, *De Re Publ.* ii. 35, 60; Liv. ii. 41, iii. 24; Plin. *Hist. Nat.* xxxiv. 4, 13). These criminal trials by quæstors must have been in use during the whole period up to 149 B.C., when the *quæstiones perpetuæ* were established, the name for which can be explained only on the supposition that quæstors continued to exercise criminal jurisdiction. On emergencies of greater moment, when the safety or honour of the state seemed endangered, the *quæstio* was entrusted by decree of the senate and people to the highest magistrates of the state—prætors, consuls, or even dictators—as shown by Livy, iv. 51, ix. 26, xxix. 20.

[1] The law did not punish a magistrate who refused to listen to the demand of appeal. It only declared that such a magistrate had done wrong.

[2] This could be done by the refusal of the consul or prætor to allow the auspices to be taken for the holding of an assembly. Mommsen, *R. Staatsr.* i. p. 145 f. In case the consul or prætor delegated his auspices to a quæstor for the occasion, it appears that the latter could convene a popular assembly. Liv. iii. 24, 7. Dion. viii. 77.

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try political offences that the judgment of the people was appealed to. But the definition of political offences was much more comprehensive than what we are accustomed to in our time. Among the Romans this term included murder, especially by poison, besides arson, forgery, and other crimes by which the public peace was threatened; whereas theft, libel, and other offences committed against private personages were prosecuted by means of a civil suit, and were not otherwise punished than by payment of fines equal in amount to the damage done, or exceeding it, as law or custom prescribed.

Penal powers of the state.

It strikes us at once that this distinction between criminal and civil law was very imperfect, and that the right of the state to inflict punishment for private offences was unduly restricted. But in this matter the Roman state forms no exception. We find that with other nations too the penal power of the state came to be recognised but slowly and gradually, and that in the first phases of society every individual regarded it as his duty and his privilege to obtain by his own strength satisfaction for the injuries he had received. The state for a long time was content with maintaining internal peace only in the main, and moderating self-help, especially with regulating and keeping within limits the atonement which the offender owed to the injured according to divine law—*i.e.* according to the human feeling of justice—and with recommending or enforcing the payment of fines as a substitute for retaliation and revenge. The Roman people, however, on their first appearance in history had passed far beyond the stage in which the Germanic nations lingered for a long time; for murder was never expiated in Rome by the mere payment of damages, as it was by the *wergeld* of the Anglo-Saxons and other races.

Defects of popular jurisdiction.

The limitation of the power of the officials, though a great benefit to the republic, was purchased at the price of a kind of popular despotism not less dangerous in its way. It is natural to every popular tribunal that in its decisions the question of law should be made subordinate

to political considerations, because it is the same people that is called upon to make laws and to decide according to these laws. The consequence of such a union of the character of legislator and judge in one person must be that the judge places himself above the law, decides each individual case according to his prevailing sentiment of justice, strains a law when it appears inconvenient, and to a certain extent acts on every occasion simultaneously in both capacities, applying and adapting a law at the same time. The people in a political trial are not able to isolate and examine on its own merits an act which they are called upon to try with regard to its lawfulness or guilt. They invariably keep in view the whole life of the accused, all the services he has rendered to the state, his position, the influence of his family and friends, and above all of his party; they calculate what services he may be able to render at a future time; they are moved by compassion, admiration, love, or hatred; besides, they possess in the last instance, as an attribute of their sovereignty, the right of pardon, a right which can be exercised before as well as after the sentence is pronounced. All trials in the Roman comitia were therefore attended with the defects peculiar to this stage in the development of the law, in which issues of right and expediency are still mixed up. Those who were accused, therefore, calculated not so much upon the justice and conviction of the judges as upon their compassion, prejudices, and partiality—feelings to which the mass of the people are always more accessible than to a strict sense of justice. They used to put on mourning, to let their hair and beard grow long, to show the scars and wounds received in battle for their country; they even resorted to tears and prayers, to the wailing of their children, to the intercession of influential relations and friends; they sought to draw suspicion on the motives of their accusers, to point out their personal faults and offences, to expose them to the hatred and contempt of the multitude.

Even the first typical example of a popular trial, that

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of Horatius for the murder of his sister, in the time of the third Roman king, bears the character of this mode of procedure. Horatius, although he was evidently guilty of the most atrocious crime, was pardoned by the people in consideration of his heroic deed in the single combat with the three Curiatii, and because his father had lost three children in the service of the state.[1] It is said of the trial of M. Manlius (384 B.C.) that no senator, no member of his gens, not even the brothers of the accused, put on mourning, a fact that had never happened before: that, on the other hand, Manlius produced four hundred citizens whom by his generosity he had delivered from bondage for debt; that he showed the spoils taken from thirty slain enemies, forty military decorations received for bravery in the field—among them two mural and eight civil crowns—that he produced, moreover, the citizens rescued by him from the hand of the enemy; that he boasted of his deeds, bared his breast covered with scars, and lastly, turning towards the Capitol, implored Jupiter to protect him, and to infuse into the Roman people at this moment the same spirit which had given him strength to save the walls of the Capitol and his whole country from the hands of the Gauls. He begged the people to keep their eyes fixed on the Capitol whilst they pronounced sentence on him to whom they owed liberty and life.[2] We are told that the prosecutors, seeing that under these circumstances no condemnation could be expected from the people, convened the assembly in another locality, where the Capitol could not be seen, and that thereupon the condemnation of Manlius was pronounced.[3]

During the first three centuries of the republic the supreme criminal jurisdiction at Rome was in the hands

[1] Vol. i. p. 36.

[2] The identical language was held by P. Scipio Africanus on the occasion of his trial. See below, chap. xvi.

[3] Vol. i. p. 307. The details of the trial of Manlius are evidently drawn from the imagination of the annalists, but this imagination was fed by their experience of political trials of their own time. Compare the trial of Sulpicius Galba, vol. iii. p. 388.

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Gradual limitation of popular jurisdiction.

of the people. However, the difficulties connected with these popular tribunals had in early times[1] given rise to a different course of procedure, which was adopted at first exceptionally, then by degrees more frequently, and finally became a general rule. This was the appointment of a select body of men to form a jury charged with pronouncing a verdict in place of the people. The jurymen or judges (*iudices*) were sworn (*iurati*); their proceedings were conducted by a magistrate or by his deputy as president, and from their decree no appeal to the people was permitted. Thus they acted for and instead of the people, although they were not formally elected as popular representatives in our sense of the word. They were from the beginning chosen from among the senators, though the senate as a body never acted as a court of justice. In criminal as in civil jurisdiction, therefore, the senators in point of fact represented the people. In course of time the number of those cases increased in which such extraordinary commissions called *quæstiones* were appointed, and at the time of Polybius the judicial functions of the senators had risen to such importance that this sharp-sighted observer of Roman political life declared them to be the chief support of the senatorial rule.[2] The popular jurisdiction in the comitia, it is true, continued to exist, but the senatorial juries more and more took the place of the people, so that the assertion was literally true that the life and property, reputation and position, of the citizens depended upon the verdict of the senatorial judges. This organization of criminal jurisdiction lasted until the middle of the second century B.C. Up to that time, the regular course was that of trial by the people: the exception were senatorial courts of sworn judges. Then the extension of the Roman dominion beyond Italy produced a change of the greatest importance, not only for the further development of legal institutions, but for the internal history of the republic as such.

[1] According to Livy, iv. 50, 51, viii. 18, in the years 413 and 330 B.C.

[2] Polyb. vi. 17, 7. See above, p. 57.

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Quæstiones perpetuæ.

The complaints of the misgoverned provinces had for some time been so frequent that the appointment of extraordinary commissions for the purpose of hearing these complaints no longer sufficed. A permanent evil had to be met by a permanent remedy. Consequently, in the year 149 B.C. the Calpurnian law was passed, by which the criminal jurisdiction which had formerly been exceptional was established as a rule. This law prescribed that for the trial of persons charged with extortion (technically called *repetundæ*, i.e. *pecuniæ*) a regular permanent court (*quæstio perpetua*) should be annually formed consisting of senators. In course of time other courts for various other offences were established after the model of this first tribunal. These permanent courts exercised from this time forward a great influence upon the internal life of the republic, particularly in consequence of the disputes about the selection of judges, as we shall see in the period of civil disturbances after the Gracchi.

Abuse of judicial functions,

It was the misfortune of the Roman republic that services rendered by individual citizens to the state were regarded not only as duties imposed by the community, but as the means of acquiring wealth and position. In the same way as military service presented to the soldiers the prospect of booty and of allotments of land; as public offices placed at the disposal of the magistrates in peace, and still more in war, the resources of the state and especially of the subjects, and became more and more the means of accumulating enormous fortunes, thus also the judicial offices were from the beginning a source of power and authority, as even Polybius relates with characteristic simplicity, and the profits arising therefrom became more considerable in proportion as with the spreading power of Rome larger interests were affected by them. The senators used and abused their judicial trust for personal and political purposes, and thereby undermined the authority of law, which was the first and most essential condition for the preservation of the republic. When the senators

were declared unworthy by the law of Caius Gracchus, in 123 B.C., to discharge the high judicial offices any longer, they had lost for ever that exalted position which they had formerly occupied in the organism of the state. It was fatal to the republic in its old form that Gracchus took the judicial office from the senators; but, worse than this, it was a proof of the impossibility of the continuance of any kind of republican form of government when the discovery was made that no other class could be found which would discharge these important duties more conscientiously. The various laws which were passed from this time forward to insure the independence and impartiality of the tribunals resemble the desperate attempts often made to prolong the life of a sick man whose death is approaching.

Private prosecutors.

The criminal procedure in Rome, as in Greece, allowed every citizen the right to act as prosecutor. The state in its earlier stages of development, after self-help by private war was abolished, left an injured party to obtain satisfaction and redress of his wrongs by prosecuting the offender by process of law. If the injured omitted to do this, or if the offence committed was not directed against the state, no trial took place, for there was no official investigation of private delinquencies. It was not until the time of the emperors that criminal procedure was established on the basis of public and official inquiry and prosecution. In the republican period the magistrates generally, and more particularly the tribunes of the people, might, if they thought proper, proceed against public offenders. But every private citizen was entitled, nay, invited to do the same, and was induced by rewards publicly offered for aiding in the punishment of crimes. The practice of those who brought such accusations on their own account was only looked upon as dishonourable if as common informers (*delatores, quadruplatores* and *calumniatores*) they made it their business for private profit. For the rest, the right of accusation possessed by every citizen was one of the securities for the preservation

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of free institutions, and formed an essential part of the organism of the republic. It was the practical result of the responsibility of magistrates that every man in the nation could rise against them as prosecutor. But the political parties more especially had recourse to this means for rendering inconvenient opponents temporarily or permanently harmless. Thus the law was made an instrument of political passions, an abuse which naturally had no beneficial effect either upon the administration of justice or upon politics, but was a source of weakness and disgrace for the former.[1] At the time of Cato this evil had already become injurious to a very high degree, as we shall see further on. After the fall of the republic the disgraceful practices of professional accusers continued in the time of the emperors, and to this evil inheritance of the republic more than to anything else the Emperor Tiberius owes a great deal of the obloquy which has for ages calumniated the ruler who was not the author of this system, and had not the power to abolish it. But the detail of criminal procedure belongs to a special history of criminal law. We will merely remark here that the accused was required to defend himself or was defended by near relations and friends. The art of pleading for the defence, as well as forensic eloquence in general, was probably brought to some degree of perfection before the time of Cato; yet in criminal as also in civil trials the orators for the defence were forbidden by the Lex Cincia[2] (204 B.C.) to accept fees.

[1] Above, p. 94.

[2] The Lex Cincia was one of those well-meant and foolish laws destined to curb human nature and to make men virtuous by compulsion. It ranks with the laws against taking interest, or more than a maximum of interest, on loans, the laws regulating prices, and the so-called luxury laws. If such laws produce any effect, it is to make those evils greater which they are intended to restrain. It is to be supposed that Roman pleaders were not satisfied with the mere honour of their arduous work, and that, like the magistrates, who were in a similar position and received no salaries, they managed to secure payment in one way or another, in spite of the Lex Cincia, just like modern barristers, who, like their Roman colleagues, do not receive fees—directly.

CHAP. V.

Punishments.

Into the various modes of punishment provided by the criminal law of Rome we cannot enter in this place. But it is essential and important for political history to characterise the nature of the punishments in general, and to point out in particular how in their application to Roman citizens they marked the value and importance of citizenship. There is, however, a striking contrast between the revolting refinement of criminal justice in the middle ages and down to recent times and the clemency of the Roman laws, which abstained from prolonging the sufferings of condemned criminals by tortures and cruelty. With few exceptions, which are probably to be attributed to exaggeration and fancy,[1] when the punishment of death was awarded the sentence was executed in a simple and expeditious manner. Roman freemen condemned to death were thrown from the Tarpeian rock (the mode of punishment inflicted by the tribunes), strangled in prison, beheaded, or, in cases of parricide, drowned. The divine law alone required severer penance. The guilty Vestal virgin was doomed to die of starvation in a walled sepulchre, and her seducer was whipped to death by the supreme pontifex himself in the open market-place.[2] If slaves were doomed to the more severe punishment of crucifixion, it was because the whole of antiquity did not consider slaves entitled to be treated like other human beings. The punishment of imprisonment, so universal in modern times, was originally not in use amongst the Romans.

[1] Such, for instance, as the tearing a man asunder by horses driven in opposite directions, which is said to have been done in the case of Mettius Fufetius. Liv. i. 28. The way in which Livy relates this horrible punishment shows that his own feelings revolted against it; and he adds: Primum ultimumque illud supplicium apud Romanos exempli parum memoris legum humanarum fuit; in aliis gloriari licet, nulli gentium mitiores placuisse pœnas. Cicero (*Pro Rabirio Perd. Reo*, 3, 10) praises those Roman legislators 'qui libertatem non acerbitate suppliciorum infestam, sed lenitate legum munitam esse voluerunt.'

[2] Liv. xxii. 57; L. Cantilius, scriba pontificis, qui cum Floronia stuprum fecerat, a pontifice maximo eo usque virgis in comitio cæsus erat, ut inter verbera expiraret. From the way in which Livy relates this cruel punishment it may be doubted whether it was or was not intended that the culprit should be actually whipped to death.

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In criminal trials confinement was but a preliminary measure to facilitate the investigation of the case; it was not imposed as an actual punishment. The Roman state, therefore, required no public prisons, no houses of correction, no establishment for compulsory labour, and no galleys.

The penalty of exile.

But, on the other hand, the Romans, like all the states of antiquity, possessed a means of punishment which can now hardly be employed, or at least only on a far smaller scale. This was the punishment of exile. In our days of unceasing and universal intercourse among the civilised nations, and of a normal condition of international peace and friendly relations with foreign powers, a man's native country is no longer of such paramount importance to him as was the case in antiquity. Not only is the right of citizenship in a foreign country now easily acquired by immigrants, but the laws of every state permit strangers as such to settle, to carry on trade and commerce, and to enjoy the protection of the laws just as if they were members of the community. In return for this readiness on the part of modern states to receive foreigners hospitably, every state acknowledges the silent obligation to keep within its own boundaries all common criminals condemned to suffer punishment, and not to allow that in the character of exiles they should infest other countries. Even the original penal settlements, now colonies of Australia, have succeeded in inducing the mother country to cease transporting criminals to those parts. But the states of antiquity had not made any progress towards this beginning of a general international confederation or brotherhood. Each individual had rights only in the state to which he belonged as a citizen. Outside his country he was utterly devoid of rights, although the necessities of mutual intercourse had compelled each nation to extend to foreigners a certain degree of toleration and protection within limited bounds. It was almost impossible to acquire a foreign citizenship or to be admitted to the community of religious and social ceremonies, and to the

common enjoyments and advantages which make life among friends agreeable. For this reason every Roman looked with horror upon a forcible separation from his home, and exile was a punishment second only to capital punishment in severity.

Fines.

Pecuniary fines are a punishment which has at all times been much in use, although they, in fact, answer very imperfectly the purpose of a just retribution. For they often fail in making the offender, who ought to be personally responsible, to suffer in his own person for his offence. The payment of a fine looks very much like buying impunity for a crime; the hardship which it entails is generally felt by the relatives of the guilty person, although they may be entirely innocent, and it may fail to be a punishment altogether, if the party subjected to it happen to be a rich man. Nevertheless this punishment was most frequently applied by the Romans on account of its easy application and its humanity in comparison with corporal sufferings. It is of great importance, above all, in the history of civilisation; for by its means the criminal law was enabled with the aid of religious influences to abolish revenge and retaliation, and to substitute compensation and reconciliation. Private war for the punishment of offences was first restricted by the introduction of fine or atonement (*pœna*, ποινή). Hence is explained in the Roman law the fine in so-called private delinquencies. The injured party, instead of taking revenge, accepted damages—as, in cases of theft, four times the value of the stolen article. Pecuniary fines were an effective means for upholding the authority of the law, and were employed to punish political offences, as also to enforce fiscal and police regulations. They were peculiarly appropriate as punishments in cases of embezzlement, and were effectually employed by the ædiles for enforcing the laws which protected the public revenue and limited the appropriation of state domains and the pasturing of cattle on common land. The imposition of heavy fines would have been still more suitable in cases

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of an offence which, after the conquest of Sicily, had begun to undermine the republic—the plundering of subject countries by Roman magistrates and adventurers of all kinds. If these men could have been made to understand that by the shameful abuse of their position and delegated authority they only prepared their own ruin instead of securing the hoped-for plunder, the old republican virtue and with it the republic itself might have continued to exist unimpaired. But, unfortunately, the evil increased so rapidly and so formidably that only a few sanguine men continued to hope that it could be arrested by means of legal repression.

Practical abolition of capital punishment.

From the beginning of the republic the personal liberty of the citizens had been secured from arbitrary power. This protection was constantly extended and more effectually guaranteed by law. The life and liberty of individuals increased in value and importance with the growth of the state. Capital punishment was rarely put into practice against Roman citizens after the Valerian laws had permitted an appeal to the people. It was at length almost entirely superseded by the right of every accused man to avoid a sentence of condemnation by going into voluntary exile before the sentence was passed. Political death by expulsion from the community, with deprivation of all further share in the political and social life of the republic, was looked upon by Romans as sufficient punishment even for crimes worthy of death. But banishment, which was at first and in theory really a severe punishment, almost entirely lost this character when towns like Prænestè, Tibur, and Naples, which had in former times been hostile or independent, had become Roman to all intents and purposes, and yet continued to enjoy the right of sheltering within their walls condemned Roman offenders.[1] A great confusion must have arisen in the notions of right and wrong; the difference between a Roman and a subject of the republic must have been keenly felt by the latter as an insupportable badge of political and social

[1] See vol. i, p. 379.

inferiority, when the free and unmolested residence in a pleasant Italian town like Naples was considered for the former the expiation of a crime worthy of death—in other words, when a Roman criminal was placed on the same level with an innocent ally! The mass of the Italians who, as customary with the lower classes in all countries, judged of their position only by material advantages and disadvantages, were perhaps indifferent to so revolting a proof of legal inequality between them and the actual Romans. But it would have been astonishing indeed if the higher classes of the Italian population had not regarded with jealousy and indignation a Roman privilege which carried with it a sentence of degradation for themselves.

Frustration of justice.

The privilege of escaping punishment by voluntary exile evidently frustrated, according to our notions, the strict and impartial execution of justice. But this was not the only benefit which a Roman citizen enjoyed. The criminal procedure was furnished with so many safeguards for the protection of the accused that we can scarcely understand how the penal laws could be fairly and honestly carried out at all. All legal proceedings could at any time be arrested by the intercession of any one of the ten tribunes; the announcement of unfavourable auspices could prevent the holding or terminate the proceedings of any popular assembly, whether convened for passing a law or for trying an offender; and the prosecutor could retire either voluntarily or under compulsion or threats. It appears that it was found necessary to obviate the dangers arising from a general right of prosecuting, by formalities which were intended to be a safeguard against charges either frivolous or inspired by the animosity of political opponents. But this protection offered no security from abuse; it merely presented an opportunity for remedying in some measure the evils of a faulty and defective system, and it shows in the administration of law the same phenomenon which we can trace in the whole political organization of the state—namely, the system of mutual checks. If, in spite of the fully-developed right

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of intercession; in spite of the scrupulous attention to formalities; in spite of the whole machinery of *auspicia*, omens, and prodigies, the freedom of public and private life continued, and right in the end prevailed over wrong, it is due, not to the imperfect organism of the political order, but to the health and vigour of the Roman people in their best time, when the extent of the state and its economical condition had not yet outgrown the proportions for which this order was created.

CHAPTER VI.

POLICE.

CHAP. VI.

Ancient ideas as to the functions of the state.

THE contrast between ancient and modern political life never perhaps appears more striking than when we consider what is done or attempted in our time to give facilities for traffic and intercourse, to remove difficulties and obstacles that hinder their expansion, to advance general well-being, to alleviate suffering, and systematically to promote education, science, and art. The ancient states paid less attention than is paid in modern times to these matters, which are not, like protection from external and internal enemies, included in the primary objects of every political organism. Many of these modes of furthering the public good seemed to the statesmen of antiquity to lie completely beyond their legitimate sphere of action. The state as such did not pay attention to institutions for charity, for health and education; even the means of communication were attended to almost exclusively from a military point of view for the purpose of facilitating the defence of the country. It was not considered the duty of the state to open roads for commercial enterprise, or to regulate and superintend trade. Only the beginnings of police regulations for markets and streets, and rudimentary efforts to promote the public health, are traceable at an early period among the practical Romans.

The plebeian and curule ædiles.

The office of the ædiles was established for this humble department of the administration soon after the commencement of the republic. In the year 367 B.C. two magistrates, bearing the name of curule ædiles (*ædiles curules*), were added to the two plebeian ædiles. They

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were intended to be of higher rank, and patricians only were to be eligible; but the plebeians obtained admission at once, and the office was henceforward held alternately by plebeians and patricians year after year. The duties of the plebeian and the curule ædiles appear on the whole to have been identical. Only in rank and some outward distinctions the curule office was marked as higher than the old plebeian ædileship. Of the duties of the ædiles, which, like the functions of all the Roman magistrates, were of a most varied nature, only a small portion can be included under the head of police;[1] others form a part of the public jurisdiction,[2] or of religion,[3] among the latter being the management of the public games, through which the ædiles took so prominent a position, and had such an opportunity of making themselves popular. In the maintenance of order and the repression of crime the ædiles were assisted by the *triumviri capitales*, and in keeping the streets and public places free from obstruction even the censors took a part.[4]

The triumviri capitales.

The management of the ordinary police was principally in the hands of the *triumviri capitales* or *nocturni*,[5] who were appointed as regular and annual officers about

[1] For instance the care for the supply of the markets. Liv. x. 11, 9: Caritas etiam annonæ sollicitam civitatem habuit, ventumque ad inopiæ ultimum foret . . . . ni eius viri [the ædile Fabius Maximus] cura qualis in bellicis rebus fuerat, talis domi tum in annonæ dispensatione præparando ac convehendo frumento fuisset.

[2] Mommsen, *Röm. Staatsr.* ii. p. 461 ff.

[3] Livy (iv. 30, 11) relates that during an epidemic, 428 B.C., foreign superstitions gained ground, and that, in consequence of this, 'datum negotium ædilibus, ut animadverterent, ne qui nisi Romani dii, neu quo alio more quam patrio colerentur.' The same charge was entrusted to the ædiles in 186 B.C., for the coercion of the Bacchanalian fanatics. Liv. xxxix. 14, 9: Consules ædilibus curulibus imperarunt, ut sacerdotes eius sacri omnes conquirerent, comprehensosque libero conclavi ad quæstionem servarent; ædiles plebis viderent, ne qua sacra in operto fierent.

[4] It is related that in 158 B.C. the censors P. Scipio Nasica and M. Popillius Lænas removed all the statues and private monuments which had been erected in public places by family pride without public authority or sanction. Plin. *Hist. Nat.* xxxiv. 6, 14.

[5] Mommsen, *Röm. Staatsr.* ii. 1, 558 ff. Liv. xxv. 1, 10; xxxix. 14, 10; xxxix. 17, 5. Plaut. *Amphitr.* I. ii. 3; *Aulularia*, III. ii. 2. Ascon. *in Cic. Milon.* p. 38.

the year 289 B.C. They appear to have been inspectors of a kind of fire brigade,[1] they discharged the duties of executors of criminal justice, and they assisted the superior magistrates in carrying out their orders. Altogether their duties were so varied and numerous that they cannot have had much time to spare for watching over the security of the town in general.

Nocturnal police.

Yet an efficient police became indispensable in proportion as the town increased in size, and as the impoverishment of the great mass of Roman citizens made crimes against life and property more numerous. At the present time nobody would think a large town secure from depredators and organized bands of robbers without the daily and nightly patrolling of policemen, and yet our well-lighted streets could never even without a police force harbour great numbers of the enemies of public order and security. We may presume that Rome was very inefficiently protected from professional criminals, nor are there wanting indications to make this pretty certain. The investigations which were made in the year 186 B.C. into the misdeeds of the fanatical worshippers of Bacchus are said to have brought to light the fact that many secret murders had been followed by no inquiry at all. We shall see later on that these reports are greatly exaggerated. However, the long continuance of the secret Bacchanalia and the abuses connected with them proves that a strict supervision and suppression of crimes were not attempted, or at any rate effected.

Supervision of places of public resort.

The surveillance of places of public entertainment, eating-houses, baths, and brothels was entrusted to the ædiles as a part of their duty to watch over health and morals, perhaps also as a means of enforcing the laws against luxury. But this superintendence seems not to have been carried out with much energy or success.

Lawlessness of the city populace.

The absence of an effective police became a serious evil in Rome when the first convulsive movements of the approaching revolution began to disturb the tranquillity of

[1] Valer. Max. viii. 1, 5.

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the state. The riots which disgraced the streets and the market-place in later years were possible only because the populace practically ruled the town. The terrorism of this populace or of paid bravos defied all law and the insufficient and weak efforts of the magistrates to preserve order. The history of the civil troubles will show how this evil increased from year to year.

Water supply.

The measures for the preservation of the public health were in the highest degree imperfect, with the one exception of the care taken to provide a plentiful supply of water for the town. The Roman aqueducts, beginning with that of the worthy old Appius Claudius Cæcus in the time of the Samnite wars, have become models for the entire world, and have probably not yet been surpassed anywhere in quality and abundance of water supplied.[1] On the other hand, the paving, cleaning, and lighting of the streets,[2] and the measures for preventing the frequent overflowing of the Tiber and the collection of stagnant water, were very deficient in spite of the much-praised Cloaca Maxima, which is supposed to date from the time of the kings.[3]

Street traffic.

If we consider the limited extent of the forum, the narrowness and crookedness of the streets, and if we reflect that the Romans lived more out of doors than in their houses, that almost all public and much private business was carried on in the open air, we can easily imagine that the traffic in the streets must frequently have been blocked. An anecdote based on this well-known annoyance relates that a sister of Appius Claudius, who had been defeated at Drepana in the first Punic war,[4]

[1] The Appian aqueduct dates from 312 B.C.; it was followed, in 272 B.C., by a second, called Anio Vetus, and after a long interval of 125 years by a third, the Aqua Marcia.

[2] The streets were not lighted at all. The paving and cleaning of the streets was the business of the owners of the adjoining houses, and was superintended by the ædiles.

[3] The great drains by which the low grounds between the hills was first made dry and habitable were repaired, and perhaps for the most part constructed, in 184 B.C. Mommsen, *Röm. Gesch.* i. p. 808.

[4] Vol. ii. p. 91.

was on one occasion delayed by the crowd, and was overheard to say she wished her brother was still alive and able to lose another battle, whereby the superfluous multitude of people might be cleared from the streets.[1] It is very improbable that after any of the numerous conflagrations, commencing with that of the first Gallic war, so much as an attempt was made to prevent this evil by widening the streets and improving the communications, until the great fire in the time of Nero cleared the ground. The far-famed skill of the Romans in land-surveying was of little use in improving the ground-plan and laying out the streets of their capital.

Markets.

The superintendence of the markets probably occupied the attention of the ædiles to a considerable extent. They had to see that the sellers used correct weights and measures and offered for sale no forbidden articles. As market-surveyors they were obliged to decide disputes that might arise,[2] but it was their especial duty to guard against dearness of provisions, and to lessen the evils arising from it, and for this purpose they used to purchase large supplies of corn with money out of the public funds and to sell it at moderate prices. This care for the daily wants of the town population became in course of time so onerous and difficult a task for the ædiles that Julius Cæsar appointed for this post special corn ædiles (*ædiles cereales*). The regulation of the prices of provisions degenerated in the time of the demagogues into a feeding of the Roman populace at the expense of the state, and led to the demoralisation of the people and the ruin of the public finances.

Sumptuary laws.

Whilst the most important part of police superintendence, which is directed to the maintenance of public order and security, received so little attention from the Romans that every individual citizen was left to protect himself pretty much as he could, we find that from a very early time the police busied itself with matters of private life, which

[1] Valer. Max. viii. 1, 4.

[2] Mommsen, *Röm. Staatsr.* ii. i. 1, 471.

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are better left to the free will and personal responsibility of every man. The so-called luxury laws, intended to preserve primeval simplicity in private expenses and style of living, waged from the very beginning a futile war with imaginary enemies of the public welfare, and the Romans clung to them with a childlike faith.[1] The laws of the twelve tables had already undertaken to restrict luxury in funerals,[2] and to prescribe the number of wreaths and purple hangings, the number of flute-players that might be employed, and the maximum sum that should be spent in ointment and incense. The ædiles with the censors had to watch over the execution of these and similar laws: but, as the frequent renewal and increased severity of such regulations prove, it was a vain attempt, while public wealth was growing apace, to oppose the natural uses and also abuses of wealth. The degeneracy of social customs in the latter years of the republic was owing, not to the circumstance that rich citizens liked handsomer furniture than the contemporaries of Cincinnatus, and that they displayed more splendour in their banquets and funerals, but to the fact that the law was not able to oppose an effective barrier to fraud, rapacity, extortion, and violence in the acquisition of wealth.

Public lands.

This is shown most clearly in the customary violation of the laws intended to prevent the appropriation of public land by private citizens. Year after year almost the same punishments were inflicted on graziers who fed more heads of cattle on the public pastures than the law allowed them. The ædiles perpetually raised complaints against these people. They inflicted fines upon fines, but the illegal practice seems to have been so lucrative that in spite of all efforts the offence continued.

Usury laws.

The ædiles met with no better results in attempting to enforce the usury laws, which not only sought to limit

[1] The first Roman who saw the fallacy of these laws seems to have been the Emperor Tiberius Tacit. *Annal.* iii. 52–55.

[2] Cicero, *De Legibus*, ii. 23, 59.

the rate of interest, but attempted to prevent the taking of interest altogether.[1]

Italian banditti.

If the maintenance of public order and security was defective in the capital itself, we may easily imagine what it was in the country, especially in the more distant and mountainous parts of Italy. Here highway robbery was an evil to which the peaceable and industrious peasants and citizens had become almost accustomed. Although the Romans had at a comparatively early date constructed broad, straight highways for military purposes, the greater part of Italy was nevertheless devoid of good roads—in other words, it was a favourable ground for thieves and robbers, for their trade is as much favoured in the country by mountains and the want of roads as it is by ill-lighted streets in towns. Italy seems to have always been a fruitful soil for banditti from the time when, before the establishment of social order, every political community to a certain extent resembled a band of robbers—that is, from the prehistoric age of Rome down to the present day. The spreading of this evil was favoured during the expansion of the Roman power by the disproportionate increase of slaves, and especially by the employment of slave labour in agriculture. The bands of slaves, leading a half-savage life whilst tending their herds among the mountains, were almost compelled to eke out their wretched allowance by systematic plunder. The free population, the impoverished descendants of the old Samnites, Campanians, Lucanians, and Bruttians,[2] were in a condition very little better than the slaves. We can guess what numbers of unemployed vagabonds were scattered about lower Italy when we hear of the formation of whole armies out of such material in the

[1] Liv. vii. 28, 9: Iudicia eo anno populi tristia in fœneratores facta, quibus ab ædilibus dicta dies esset, traduntur. Liv. x. 23, 12: Eodem anno Cn. et Q. Ogulnii ædiles curules aliquot fœneratoribus diem dixerunt. Liv. xxxv. 41, 9: Iudicia in fœneratores eo anno multa severe sunt facta accusantibus privatos ædilibus.

[2] The Bruttians were always notorious robbers. Liv. xxviii. 12, 8; xxix. 6, 2.

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time of the Hannibalic war.[1] The wholesale robberies which made Bruttium unsafe occasionally assumed such proportions that military measures had to be taken against them. We shall see in the following section how such a state of affairs led to horrible revolts of slaves as an evil of periodical occurrence.

[1] Vol. ii. p. 318. Liv. xxxix. 29, 8: L. Postumius prætor de pastorum coniuratione qui vias latrociniis pascuaque publica infesta habuerant quæstionem severe exercuit. Ad septem millia hominum condemnavit.

CHAPTER VII.

THE PUBLIC FINANCES.

Modern theories of revenue and expenditure.

ALL order in modern States is based upon a regular and careful administration of the finances. The ministry of finance is, therefore, the most important of all in so far as the means for the departments of justice and war, for police and education, for trade and commerce, must be supplied by a regular flow of revenue. The public income and expenditure are therefore most carefully examined and calculated, and every member of the community as a payer of taxes takes a lively interest in the management of the public funds.

Roman notions of finance.

The case was very different in Rome. The Roman citizens left to the senate the care for the expenses and revenues of the state.[1] The popular assembly exercised no manner of control over it; the management of the public finances never furnished the demagogues with a theme for charges, insinuations, complaints or grievances. In the older time of the republic the struggle between patricians and plebeians was fought out on other issues; the subject of taxes or the employment of public money was never a point in dispute. Nor was this branch of the administration ever conducted with that unity and order which seem to us indispensable; never was a public board or department organized for the purpose of examining into it, nor were the various officials who managed the public revenues under any strict and effective control.

Public works.

This state of things was the result of the fact that the services of the citizens to the community were not rendered in Rome in return for reward or salary, but

[1] Above, p. 47 ff.

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were regarded as a duty and an honour. In the earliest times this practice was probably observed without limitation. The general administration and that of justice occasioned but slight expenses for clerks and other subordinate officials; even in case of war the expenses which the state as such had to bear were not great, at least so long as the citizens supplied their own equipment and their provisions. Public works alone made an exception. The great labour of fortifying the town, of draining the lower parts of it by the great sewers, the erection of temples and other public buildings were at the charge of the state, and demanded even in the earlier times, not only the work of slaves, but also that of hired labourers and artisans.

Management of the army.

When with the introduction of pay for the soldiers in the last war with Veii, 406 B.C.,[1] the expenses for the army increased, and a war tax, the *tributum*, was introduced—or, if it had been already introduced,[2] became more regular, and in consequence more severely felt—we should have expected that the people would exercise some kind of supervision over the manner in which this money was raised and applied. But even now we hear nothing of

[1] Vol. i. p. 245.

[2] All authorities agree and most distinctly report that on this occasion military pay was first introduced. Liv. iv. 59, 11: Additum deinde omnium maxime tempestivo principum in multitudinem munere, ut ante mentionem ullam plebis tribunorumque decerneret senatus, ut stipendium miles de publico acciperet, cum ante id tempus de suo quisque functus eo munere esset. Comp. Diodor. xiv. 16. Zonar. vii. 20. Nevertheless Mommsen (*D. röm. Tribus*, p. 31, and *Röm. Gesch.* i. 297) assumes that the soldiers had even before this received pay. The innovation introduced in 406 B.C. consisted, according to him, in this, that the payment was now made from the general fund of the community, whereas formerly each tribe paid the soldiers belonging to it. This view can hardly be maintained. There is no evidence of such payments made by the tribes; nor does it appear how the individual soldiers could feel a relief if the payment was made as before and only shifted from the tribes to the general public. Nor is it clear how such a supposed alteration made any difference in actual warfare, such as is represented to have taken place. It is related that by the introduction of military pay the republic was enabled for the first time to continue war operations all the year round, and to press the siege of Veii summer and winter. Evidently this could have been done equally well, whether the pay for the soldiers was furnished by the tribes or by the general treasury.

any opposition or of disputes resulting therefrom. The people and their leaders allowed the senate and the magistrates to manage the public money at pleasure. The extreme means of resistance, the secession which the plebs could resort to, and did resort to three times, was on no occasion in the least connected with a refusal to pay taxes. This indifference to the imposition of war-taxes is probably owing to the fact that the people, when they decided on war in the assembly of centuries, by their vote implicitly granted the necessary taxes; and secondly to the circumstance that the *tributum* was looked upon as a loan, and was returned on the termination of a successful war out of the captured booty. War supported war, and wars were essentially undertaken for booty, until they gradually expanded into wars for conquest.

Disposal of booty taken in war.

As the gaining of booty and the conquest of land were the primary objects for which the military system of the Romans seems to have been organized, all economical arrangements of society were more or less influenced by it. Captured property cannot be distributed according to the laws of equity like property obtained by labour. Force and violence take the place of legal order. Hence the Roman generals disposed of the booty [1] according to their will and pleasure, either selling it for the benefit of the public treasury or distributing it among the troops. Money thus obtained was naturally not under the control of the people. The commanding generals must always have been in a position to enrich themselves and their friends with the booty made in war. In one or two instances discontent was thus caused among the people, as in the case of Camillus, who was charged with peculation in the disposal of the Veientine booty, and was obliged to go into exile.[2] If the tribute raised for a war was returned with interest to the Roman taxpayer from the proceeds of the booty, he could hardly feel called upon to institute a strict investigation concerning the remainder of the booty.

[1] Mommsen, *Röm. Staatsrecht*, i. p. 103, and Hermes, i. p. 173.

[2] Liv. v. 32, 8. Plut. *Camill.* 12.

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War indemnities.

After the victorious wars in Italy, Spain, Africa, Macedonia, and Syria, immense sums were brought home by the generals and exhibited in triumphal processions, or were paid by the conquered nations by way of war indemnities.[1] It would be interesting to know what became of these sums. Now at least, if not sooner, the administrators of the public funds ought to have been called upon to render to the people an account of the sums entrusted to their management.[2] But the Roman people calmly left the disposal of these sums to the senate—*i.e.* to the ruling families. In what manner these fulfilled the duty is shown by the disappearance of three thousand talents in the hands of Lucius Scipio Asiaticus, the victor of Magnesia.

Conquered lands.

This want of vigilance as to the disposal of booty gained in war extended even to the most important part of this booty, the conquered territory which became *ager publicus*. Here the practice of 'occupation' became customary. The land was appropriated by individuals in an apparently irregular manner,[3] and thus the state lost a

[1] In 293 B.C. Papirius Cursor brought home from the Samnite war 2,535,000 asses and 1,830 pounds of silver; in 205 B.C. Scipio brought from Spain 14,342 pounds of silver, besides large sums in coined money; in 201 he brought from Carthage 100,000 pounds of silver; in 197 B.C. the sums of 79,000 and again of 53,200 denarii were brought home from the war with the Insubrians; in 196 B.C. 234,000 denarii; in 194 B.C. Cato brought from Spain 123,000 denarii, 25,000 pounds of silver, 1,040 pounds of gold; in the same year Flaminius brought home 252,000 denarii, 14,515 gold pieces (*philippei*), 18,270 pounds of silver, 3,714 pounds of gold; in 189 B.C. the victory over Antiochus yielded 258,700 Attic tetradrachmas, 462,070 cistophors, 140,000 philippei, 138,844 pounds of silver, 1,024 pounds of gold; the victory over Perseus, 168 B.C., yielded 120,000,000 sesterces. Probably not all of these reports are trustworthy. No errors are more frequent in the ancient manuscripts than those of figures; and even if correctly handed down these statements are subject to historical doubts. Still so much is certain, that large sums must have been deposited in the public treasury after every successful war, and that there was plenty of opportunity for dishonest commanders for enriching themselves at the public cost.

[2] Comp. Mommsen, *Röm. Gesch.* i. pp. 806, 808.

[3] The process of 'occupation' of newly-acquired and waste lands cannot have been without certain rules and regulations; as otherwise collisions between the occupiers would have been unavoidable.' We are not told what these regulations were. It is possible that the magistrates who so freely

source of revenue which under a better regulated system of financial administration it would never have parted with.

Public and private lands.

The neglect of the state in the administration of public lands produced a systematic dishonesty in the ruling families with regard to public property, and nourished that spirit of cupidity, rapacity, and violence which has always been a peculiar feature of the Roman nobility. Their selfishness, cruelty, and overbearing increased with the extension of the Roman dominion, and became, in the end, fatal to the conquered nations, and then to the conquerors themselves. Although the law required a tax to be paid into the public treasury for occupied public lands and for the use of public pastures, and although it made a clear distinction between public domains and private property, the large landed proprietors managed, with the connivance of the magistrates, not only to evade the payment of the tax, but also to obliterate the difference between private and public lands to the detriment of the state. In this manner, not only a large amount of the land conquered in the Samnite wars and in the war against Pyrrhus was lost to the state, but even the valuable possession of the Campanian territory, taken in the war with Hannibal, was encroached upon by private persons. Even the financial reformer Cato appears not to have ventured during his censorship, 184 B.C., to expose and to abolish these malpractices. It was not till ten years later that an attempt was made.[1]

Effects of conquest.

We see in every chapter of the wars with Philip, Antiochus, and Perseus, how the cupidity of the Roman

disposed of the moveable booty, had also the control over the manner in which the conquered land was to be occupied.

[1] Liv. xlii. 1, 6: Senatui placuit L. Postumium consulem ad agrum publicum a privato terminandum in Campaniam ire, cuius ingentem modum possidere privatos paulatim proferendo fines constabat. Liv. xlii. 19, 1: Eodem anno [172 B.C.] quia per recognitionem Postumii consulis magna pars agri Campani, quam privati sine discrimine passim possederant, recuperata in publicum erat, M. Lucretius tribunus plebis promulgavit, ut agrum Campanum censores fruendum locarent, quod factum tot annis post captam Capuam non fuerat, ut in vacuo vagaretur cupiditas privatorum.

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nobility increased when the wars in Greece and Asia placed within their reach the treasures of these countries. The aristocracy now gained those colossal fortunes which fired their political ambition and made them impatient of republican equality; while the middle class, especially the free peasantry which had been the strength of the old republic, sank into hopeless poverty.

Application of fines.

Almost the same degree of freedom with which the Roman consuls disposed of the booty made in war was shown in the manner in which the magistrates, especially the ædiles, employed the fines imposed by them for offences against the fiscal laws. These fines they did not deliver up, as we should expect, into the public treasury, but they employed them as they thought proper, for public buildings, monuments, roads, and other public improvements, and especially for adorning temples.[1] It appears that the people took no heed of these proceedings; and as the sums thus spent were not voted by the senate, the magistrates in all probability were not even obliged by law to await the sanction of the senate before they applied them, although there is reason to suppose that they usually acted in accordance with the understood wishes of that body.

Expenditure on the public games.

The money needed for the public games which certain magistrates had to exhibit had in former times been provided by the state. But these means were far from sufficient when the love of splendour had increased with foreign conquests and the wealth of the great. The

[1] Liv. x. 23, 11: 'Eodem anno [296 B.C.] Cn. et Q. Ogulnii ædiles curules aliquot fœneratoribus diem dixerunt; quorum bonis multatis ex eo quod in publicum redactum est, ænea in Capitolio limina et trium mensarum argentea vasa in cella Iovis Iovemque in culmine cum quadrigis et ad ficum Ruminalem simulacra infantium conditorum urbis sub uberibus lupæ posuerunt. Liv. x. 31, 9. Liv. x. 47, 4: Eodem anno [293 B.C.] ab ædilibus curulibus damnatis aliquot pecuariis via a Martis silice ad Bovillas perstrata est. Liv. xxiv. 16, 19; xxvii. 6, 19; xxx. 39, 8; xxxiii. 25, 3, 42, 10; xxxiv. 53, 4; xxxv. 10, 12: Ædilitas insignis eo anno [193 B.C.] fuit M. Æmilii Lepidi et L. Æmilii Paulli; pecuarios damnarunt; ex ea pecunia clipea inaurata in fastigio Jovis ædis posuerunt; porticum unam extra portam Trigeminam, emporio ad Tiberim adiecto, alteram ab porta Fontinali ad Martis aram, qua in Campum iter esset, perduxerunt. Liv. xxxv. 41, 9; xxxviii. 35, 5.

magistrates frequently found themselves compelled to add considerable sums to defray the expenses. At first they were naturally obliged to draw upon their own private resources, but they soon found ways and means of shifting this burden upon others. They induced the Roman allies in Italy and the subjects in the provinces to give voluntary contributions, by which they were enabled not only to add splendour to the games recognised and demanded by the state, but, moreover, to arrange votive games which the state did not require and which served principally to satisfy personal or family vanity. These voluntary contributions[1] must in most cases have been rather compulsory than voluntary, and hence we see that the senate by a formal decree limited the expenses of such festivals and endeavoured to protect the subjects from the demands or exactions of the magistrates.[2] Such attempts at exaction could not be practised upon Roman citizens, but only upon subjects who were exposed without protection to the arbitrary power of Roman functionaries. Although the proceedings of the magistrates were not contrary to any constitutional law and could be restrained by the senate only from considerations of equity, it is nevertheless strange that the people should have looked with so much indifference on exactions which so severely taxed the subjects of Rome for the private benefit of individuals, and by which vast sums were spent which might have been better employed for the general good.

The farming of the revenue.

The magistrates acted with similar freedom and the people showed similar indifference in their dealings with the farmers of the public revenue. In these transactions the private interest of the persons concerned was taken

[1] One might be inclined to call these voluntary contributions 'benevolences,' a word so appropriately applied to similar exactions of English kings.

[2] Liv. ix. 44, 8. The senatorial decree was: Ne quid Q. Fulvius ad eos ludos accerseret, cogeret, acciperet, faceret adversus id senatus consultum, quod L. Æmilio Cn. Bæbio consulibus de ludis factum esset. Decreverat id senatus propter effusos sumptus factos in ludos Ti. Sempronii ædilis qui graves non modo Italiæ ac sociis Latini nominis, sed etiam provinciis externis fuerant.

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into consideration more than the interest of the state. The magistrates did not venture to press the influential capitalists too hard, to exact the highest offers from the farmers of the revenue, or to demand punctual and exact payment. This we may infer from the discontent which ensued when upon one occasion a man of firmness and integrity, the unflinching Cato, keeping in view only the advantage of the state, raised the sums payable by the collectors above the usual amount. The excitement among the farmers of the revenue was so great that even the stern Cato was compelled to yield, to annul the contracts which he had made, and to prepare new contracts rather more favourable to the *publicani*.[1] From such an exceptional case we can understand what the usual course of proceeding in financial matters must have been. As the senate had it in its power to extend the terms of payment and to grant other facilities to the contractors and farmers,[2] it is not likely that such a scheme for favouring the interests of a political party was from conscientious motives thrown aside in the interest of the general good.

Waste of public revenues and resources.

Though individually the Romans were exceedingly economical and careful in the management of their private property, the state as such was extravagant and careless with the state revenue. It was found impossible to protect the public property from being plundered by private individuals, and the feeling of powerlessness resulted in reckless indifference. It was felt that revenues which could not be preserved intact and devoted to the common good were of no value to the state and might as well be abandoned. The most striking example of this financial incompetency of the Romans was perhaps their course of proceeding with regard to the Macedonian

[1] Liv. xxxix. 44, 8: Et vectigalia summis pretiis, ultro tributa [the public contracts] infimis locaverunt; quas locationes cum senatus precibus et lacrimis victus publicanorum induci et de integro locari iussisset, censores edicto submotis ab hasta, qui ludificati priorem locationem erant, omnia eadem paululum imminutis pretiis locaverunt. Plut. *Cato maior*, 19.

[2] Polyb. vi. 17, 5.

mines which came into their hands after the war with Perseus[1] (168 B.C.) Not being in a condition to keep the farmers of the revenue from peculation and violence, the senate preferred letting the mines remain unworked.

The control of the revenue.

The want of order in the management of the public funds is displayed in the number and variety of the officers to whom it was entrusted. In the departments of war and justice there was, on the whole, unity of management, owing to the circumstance that the consuls and prætors had the control of these branches of the administration. But it is not easy to determine which magistrate is to be regarded as minister of finance. The censor was perhaps the man who could lay the best claim to this honour, because in arranging the census and dividing the citizens into classes according to their property, he made the assessment for collecting the tributum or war-tax; because, in the second place, he levied the rent from the state domains; and, finally, because he paid the contractors for public works. But the censor had also such important and varied duties of other kinds that he could not devote himself entirely to financial business; whilst the quæstors, ædiles, and consuls were also directly employed in the collection and expenditure of public money.

Financial duties of the censors.

The censorship differed essentially from the other chief offices of the republic, the consulship and prætorship, by the peculiarity that it was not endowed with the *imperium* and therefore qualified neither for military command nor for the administration of justice. It was specifically a civil office with strictly defined though diversified duties. The censors had not the right to convoke the senate, nor could they assemble the people, except for the purposes of the census. As they had no *imperium* but merely the *potestas*, they were without lictors. Nevertheless, their office was regarded as the highest in rank and dignity, and was filled invariably by men who had already been consuls, and in discharging

[1] Vol. iii. p. 259.

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their functions they acted with such authority that they might seem to have been invested with unlimited power. We have already mentioned the periodical reforms made by the censors in the constitution of the classes and tribes of the people and in the drawing up of the lists for the senate.[1] We have here to deal only with their financial duties; and these may be summed up by saying that the revenues from the state domains, pastures, woods, fisheries, salt-works, and mines, as well as the customs and harbour dues,[2] were not raised directly by officers appointed for that purpose, but were let by the censors, as has been already remarked, for five years at a time to the highest bidder.

The Publicani.

As the senatorial nobility was forbidden first by custom, and afterwards by law, to engage in trade, the management of the large pecuniary transactions of the state was left in the hands of another class of citizens, which owed its origin and influence to the peculiar financial and mercantile system of the Roman republic. This class was distinct by custom and law from the ruling aristocracy, and at the same time raised above the mass of the people and connected with the aristocracy by the influence which wealth is always sure to command. The class thus formed of the farmers of the revenue and great capitalists, received towards the end of the republic the name of horsemen or 'knights' (*equites*). Placed between the two extremes of society, they were to a certain extent a middle class—a connecting link between the other two classes. In the same manner as the ruling nobility made use of their official position to enrich themselves in the service of the state, and especially at the expense of the subjects, the knights in their turn made the financial operations of the state a source of wealth for themselves. They formed themselves into commercial companies and collected large masses of capital, which enabled them to undertake vast contracts, as well in the revenue department as in the commissariat for the armies in Italy and the provinces. For the con-

[1] Above, pp. 27, 29, 35 ff. 67.

[2] Liv. xxxii. 7, 2; xl. 51, 8.

tracts which the censors gave out every five years these companies of knights were alone able to tender. They shared among themselves all the different branches of the financial business of the state, and possessed, in fact, a monopoly in all these matters. It is tolerably well known how they made use of this monopoly, not only to their own profit and to the detriment of the taxpayers, but occasionally also to the injury of the public service. As early as the Hannibalic war instances of gross fraud came to light;[1] later on the publicans, in conjunction with the proconsuls, were the plague of the provinces. The great capitalists of the present day, the banking-houses and joint-stock companies of all kinds, important as they are, exercise on national commerce and social economy, and in political questions, an influence not nearly equal to that of the moneyed class of knights among the Romans. In fact, the publicans, by being indispensable in the Roman financial administration, became masters of the entire money market, and a power in the state for which there is now no parallel.

Abolition of the tributum.

The principle that Rome was justified in living at the expense of her subjects was formally acknowledged when, in the year 167 B.C., the tributum—the only direct tax which the Roman citizens paid[2]—was abolished, because the government could dispense with it after the conquest of Macedonia. The entire burden and expense of the administration were now put off upon the subjects,[3] who moreover had to contribute towards the enrichment of Roman governors and usurers. The time came when they were also compelled to provide for the feeding of the Roman populace, and then it could with truth be said that the city of Rome lived upon the interest of the capital which it had obtained by the edge of the sword.

[1] Vol. ii. p. 319.

[2] The *vicesima manumissionum*, a tax of five per cent. on the value of manumitted slaves (Liv. vii. 16), was not employed for the use of the administration, but served for the accumulation of a reserve fund in the *ærarium sanctius* (Liv. xxvii. 10, 11). See vol. ii. p. 362, n. 3.

[3] On the taxation of the provinces see Marquardt, *Röm. Alterth.* iii. 2, 139 ff.

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Frumentarian laws.

The fatal waste of the public funds reached its full development only in the frumentarian laws of C. Gracchus and his successors. But the ground had been well prepared for these demagogues beforehand. It was considered natural from the beginning that the government should have the right of fixing the market price of all indispensable provisions, particularly salt and corn. We therefore hear even in the earliest times of large quantities of corn being purchased at the expense of the state, and we hear of a regulation to prevent usurers from profiting by the high price of corn in times of dearth. The price of salt—of which the state had the monopoly—was determined in the year 204 B.C. by M. Livius Salinator for Rome and the various parts of Italy, more, it is true, for the advantage of the state treasury than for that of the rural population.[1] After the conquest of Sicily and Sardinia the importation of corn into Rome began on a large scale, favoured by the system of provincial taxation, which consisted in the payment of tithes. From Spain, also, large supplies of corn were sometimes imported.[2] This corn was sold at a low price, and thus the Roman plebs by degrees became accustomed to receive a part of their support from the state. It appears that in order to secure this advantage for the population of the ruling city, the export of corn from the provinces to other markets was prohibited, or at least restricted.[3] Through this short-sighted commercial policy the Roman government injured all parties concerned. Agriculture in Italy

[1] Liv. xxix. 37, 3; Vectigal etiam novum ex salaria annona statuerunt censores. Sextante sal et Romæ et per totam Italiam erat. Romæ pretio eodem, pluris in foris et conciliabulis et alio alibi pretio præbendum locaverunt.

[2] Liv. xxx. 26, 5: Annus [203 B.C.] insignis annonæ vilitate fuit: præterquam quod pace omnis Italia erat aperta, etiam quod magnam vim frumenti ex Hispania missam M. Valerius Falto et M. Fabius Buteo ædiles curules quaternis æris vicatim populo descripserunt.

[3] Polybius (xxviii. 2) relates that Rhodes asked and obtained leave from the Roman senate to purchase a fixed quantity of Sicilian corn. It is a legitimate inference that no export of corn from Sicily and other provinces was allowed without special permission.

suffered by such wholesale importation; the provinces suffered by the restriction of trade; and the Roman people accustomed themselves to live, not by the produce of their own labour, but upon the alms of the state—*i.e.* by the gratuities of the statesmen who required the favour of the people for their own ambitious ends.

Items of public expenditure.

Before the frumentarian laws of the demagogues rendered the support of the Roman proletariat a serious burden to the public treasury, the chief items of expenditure were those for war and public buildings. War naturally then, as in our time, swallowed up the greater part of the revenues, and the money spent directly upon it by no means represented the whole cost of war. We must add the personal services of the individual citizens and their expenditure for arms and food, which were not paid for by the state. The pay of the troops, the equipment of fleets and armies, the supply of provisions furnished to the allies, the expenses of transport, and other direct and indirect burdens weighed heavily upon the finances as soon as wars were protracted, or were not attended with brilliant success. The war-tax or tributum of the citizens must always have been felt to be very oppressive, although the prospect of repayment from the proceeds of the war may have made the taxpayers less reluctant to submit to it.

Censorial contracts for public works.

Nevertheless, Polybius mentions the expenses for public buildings as the heaviest which the state had to bear.[1] When he wrote this, he can have been thinking only of the current expenses in time of peace without taking into consideration the extraordinary cost of war. The application of these sums was the business of the censors, whose office, on account of these important duties and of the letting of the domains and taxes, was a kind of combination of the duties of a minister for public works—of what is called in England the Woods and Forests—and of

[1] Polyb. vi. 13, 3: τῆς δὲ παρὰ πολὺ τῶν ἄλλων ὁλοσχερεστάτης καὶ μεγίστης δαπάνης, ἣν οἱ τιμηταὶ ποιοῦσιν εἰς τὰς ἐπισκευὰς καὶ κατασκευὰς τῶν δημοσίων κατὰ πενταετηρίδα, ταύτης ἡ συγκλητός ἐστι κυρία.

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Finance. In the same manner as they let the levying of the revenues of the public domains to the highest bidder, they made contracts for the building, repairs, and maintenance of public works and edifices. By this means they exercised a most extensive influence upon a numerous class of contractors, and indirectly upon the artisans and labourers, an influence which they might have turned to account, as the story of the censor Appius Claudius Cæcus seems to indicate, for ambitious purposes.[1] But, with the exception of this doubtful story, it does not appear that the censors ever abused their power; and it would have been strange indeed if they did not make as many enemies as friends in the performance of their duties. On the whole, they seem to have worked in harmony with the senate, which had the right of entrusting the superintendence of the public works to other magistrates, whenever the eighteen months for which the censors were regularly appointed had expired.

The care of the temples.

The most considerable item of expenditure next to that for war and public buildings was that for religious worship, including the erection and repairing of the temples, and the celebration of the periodical festivals, especially the public games. It was natural that the state should undertake expenses for a religious establishment completely dependent on the state. There existed no endowments and no special income for these expenses, beyond the reach of state control. Thus the priests remained always dependent upon the state with regard to pecuniary matters, and the unity of state and religion was never disturbed. The revenues which the temples had from land belonging to them and the voluntary offerings of worshippers were not sufficient to make the priests independent of the state.

General application of the revenue.

The administration of justice involved but a slight charge on the finances. The prætors, like the consuls and all the annual magistrates, served without pay. There were no courts of justice, and no prisons to be built and

[1] Vol. i. p. 438.

kept in repair. The salaries of the subordinate officials, clerks, and attendants, who were mostly freedmen, could not be heavy. On the other hand, the fines imposed on persons convicted must have produced considerable sums for the public exchequer, or at any rate for public purposes.[1] In like manner the police service, including the supervision of markets, the care of public security and health, was simple, not to say rude, and could not have entailed a great outlay. The expenses of diplomatic intercourse were limited to the cost of an occasional journey of a Roman ambassador, presents to noble guests, lodging and entertainment of the ambassadors of foreign states, and gifts presented as marks of honour to the allies.[2] The budget, if we may employ that name, was not encumbered with expenses for education, scientific establishments, art schools, museums, and the like. Charity was left entirely to private individuals; the state did not undertake the relief of sickness, insanity, or destitution. The principle that the Roman citizen received no pay for the fulfilment of his civil duties, was uniformly adhered to in every department of the public service except the military, and thus the state was spared considerable expense. Nor did the Roman citizens ever receive wages like the Athenians for attending the popular assemblies for legislative or judicial purposes.

Public debts and loans.

The Roman state incurred debts only in times of extreme pressure. Thus in the third year of the Hannibalic war the payment for the supplies for the army was postponed till better times.[3] Five years later distress compelled the state to take a step which up to this time had never been heard of; it was no less than the contracting

[1] Above, p. 137.

[2] Such as the presents given to King Masinissa (Liv. xxxi. 11, 11: Dona ampla data, vasa aurea argenteaque, toga purpurea et palmata tunica cum eburneo scipione et toga prætexta cum curuli sella), and to Attalus, the brother of Eumenes (Liv. xxxv. 23, 11). The expenses of the Roman ambassadors and all those travelling in the service of the state were borne mostly by the allies and subjects.

[3] Liv. xxvi. 48. Vol. ii. p. 288.

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of a formal loan.[1] This loan was viewed by those who supplied the money, not in the light of a financial speculation, but of a patriotic action. Each citizen stated the amount which he was able to contribute, and thus a sum was raised which the state promised to repay in time, without, as far as we can see, paying any interest. The repayment took place in three instalments: one third of the amount being returned, not in money, but in public land, for which a nominal rent was to be paid to the state so long as the creditors were not satisfied in cash.[2] If Roman financiers had hit upon the idea of raising loans and paying interest in return for them, the result would perhaps have been the introduction of our modern system of public debts, which marks in so striking a manner the importance possessed by money in the modern state.

Control of the senate.

As the financial business of the republic was not in one hand but divided among different magistrates, the senate alone could to a certain extent superintend and watch over the public revenue and expenditure. In this branch of the administration, therefore, the senate ruled with a far more absolute power than in any other branch. In fact it possessed the supreme financial authority: it was, so to speak, the ministry of finance in commission. All the magistrates depended on the sums granted by the senate, and were responsible to the senate for the manner in which they employed them. The money which they had not received from the state treasury by order of the senate was alone at their free disposal, especially booty made in war and judicial fines.[3] The proceeds of all taxes and state domains were under the superintendence of the senate, and the payments out of the state treasury were made by the quæstor on a senatorial order. According to Polybius, the consul alone was not dependent upon the sanction of the senate, but disposed of the public money at his own free will.[4] This exceptional position of the

[1] Vol. ii. p. 362. [2] Liv. xxxi. 13. [3] Above, pp. 151, 154.

[4] Polyb. vi. 12, 8; 13, 2. It is possible that Polybius in making this statement was thinking only of the usual and regular expenses, such as payments

consul cannot be explained, and undoubtedly did not exist to the extent stated by Polybius. On this point the assertion even of a witness generally so trustworthy as Polybius cannot be implicitly relied on. We know from numerous instances, and from Polybius himself, that the senate granted to the consuls the means for carrying on wars.[1] Not one case is known which proves that the consuls had unlimited command of the finances; nor do we ever hear of disputes between the consuls and the senate about the use of public money, which would certainly have been inevitable if two independent powers had had the disposal of the same fund. It is, moreover, impossible to understand why the consuls more than any other magistrates should have claimed in financial matters an independence which would have rendered the general supervision of the senate quite illusory. We must, therefore, maintain as a general fact that the supreme control of the regular income and expenditure of the state was in the hands of the senate, and that, on the one hand, the people

for magistrates' servants, soldiers, and the like, which were either permanent, or which were implied by a state of war. For other expenses, which were extraordinary or accidental, the consuls were certainly bound to apply to the senate for authority: for instance, in the case of votive games (Liv. xxviii. 39, 1; xxxvi. 36, 1; xl. 44, 8; xxxix. 5, 7). It appears that the senate waived its right of granting special supplies to the consuls only in those cases where a previous vote of the people or a senatorial decree contained the permission to draw the necessary money from the treasury. We may compare the modern parliamentary right of voting supplies, which is understood not to be exercised with regard to the money necessary for paying the interest on the national debt, but which nevertheless exists in all its constitutional bearings. Just so the senate's right with regard to granting supplies was not the less real and general because it was not exercised in certain cases.

[1] Polyb. vi. 15, 2: *ὁ ὕπατος ἐπειδὰν ὁρμήσῃ μετὰ τῆς δυνάμεως, δοκεῖ μὲν αὐτοκράτωρ εἶναι, προσδεῖται δὲ τοῦ δήμου καὶ τῆς συγκλήτου. Δῆλον γὰρ, ὡς δεῖ μὲν ἐπιπέμπεσθαι τοῖς στρατοπέδοις ἀεὶ τὰς χορηγίας ἄνευ δὲ τοῦ τῆς συγκλήτου βουλήματος οὔτε σῖτος οὔτε ἱματισμὸς οὔτε ὀψώνια δύναται χορηγεῖσθαι τοῖς στρατοπέδοις.* This passage contains almost a direct contradiction of what Polybius had said before (chaps. 12, 8; 13, 2). An agreement can be established only by assuming that in his opinion the consuls had a right to take out of the treasury the money necessary for an expedition without the authorisation of the senate before they set out from Rome, but that afterwards when they wanted additional supplies they were dependent on the senate. This would amount to what we said in the previous note.

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were without the right of granting supplies, whilst, on the other, the magistrates were dependent on the senate for the sums required in their several departments.

Rudeness of Roman finance.

Looking at the financial organization of the Roman republic as a whole, we cannot help remarking that it was far more rude and irregular than either the military or judicial administration; that it was not developed in proportion as the dominion of the republic was extended, and that it was consequently inadequate to the necessities of a great community. The multiplicity of functionaries; the rapid change of office and the consequent dependence of the magistrates on their subordinate assistants; the process of raising taxes by revenue-farmers; the arbitrary proceedings of the several magistrates in the disposal of public money; the imperfect control of the senate; finally, the universal rapacity, cupidity, and venality of all officers connected with the administration of public trusts—all this combined to waste immense resources, by which the state as such might have benefited, for the personal advantage of a few and the corruption of the mass of the people. This system under which the subject populations of Rome were unjustly and cruelly ground down, the Roman people demoralised, and the nobility raised to immoderate wealth and power, was not the least among the causes which undermined the republican constitution and brought about that great revolution which in establishing a monarchical government introduced something like order and justice into the financial as well as the other departments of the public service.

CHAPTER VIII.

THE TRIBUNES OF THE PEOPLE.

Unique character of the tribuneship.

WHILST the organization of the Roman republic with regard to administration and government was similar in all essential points to those of most other states, it differed from all ancient and modern constitutions known to us, in one peculiar feature which appears specifically Roman. We find elsewhere magistrates for the superintendence of the administration of war, justice, finance, and so forth, corresponding to the Roman consuls, prætors, censors, ædiles, and quæstors. But in no other state do we find an office that bears the slightest resemblance to the Roman tribuneship. And this office was not an unimportant element in Rome, a trifling appendage which might have been removed without altering the character of the organism of the state; on the contrary, it was an essential condition to the life of this organism, whose working depended throughout, and at all times, upon the co-operation of the magistrates who held this office. If, therefore, we wish to understand the nature of the Roman constitution, we must gain some insight into the character of the tribuneship; and this is not easy, because we cannot compare the institution with any other known to us.

Origin of the tribuneship.

The origin of the tribuneship, as has been explained,[1] was due to the peculiar circumstances in which the young republic was placed by the contrast between the ruling citizens, who enjoyed full privileges, and the large mass of inferior citizens, who, being excluded from the government, were exposed to unjust treatment on the part of

[1] Vol. i. p. 142.

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the patrician magistrates. The tribunes were intended to be the official patrons of the plebeians, and in thus taking the position of champions of their class against the patrician magistrates and the patrician senate they formed a uniting link between the two halves of the population, and prevented it from breaking asunder into two separate and hostile parts.

Change in the position of the tribunes.

We have seen how the tribunes, starting from a small beginning, gradually succeeded in obtaining for their plebeian fellow-citizens perfect equality with the patricians, and how with the completion of this equality by the Licinian laws (366 B.C.), and finally by the Hortensian law (287 B.C.), the original object for the appointment of tribunes was fully realised. It might now have been expected that with the removal of all differences which had existed in the political rights of patricians and plebeians, the magistracy which had been established to protect those who were labouring under political disabilities from the abuse of privileges by a superior class would also disappear. The equalisation of the two classes of citizens had, however, taken place so slowly and gradually that the tribuneship lost its bearing upon its original object, not suddenly, but by slow degrees. In proportion as the plebeians rose more and more to the rights of the patricians; as they took a greater part in the government and conduct of the state; as their interests grew to be identical with those of the patricians, so their champions, the tribunes of the people, found themselves called upon to give up their opposition against the other magistrates and the senate, and personally to take part in the government. Thus a change took place in the character of the tribuneship. It was taken into the service of the nobility, and became the most important instrument with which the senate preserved the unity of the government in the midst of all the difficulties produced by the continual change, frequent opposition, and incapacity of the several magistrates.

The tribuneship was eminently qualified to answer this

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purpose. No department of the actual administration was ever entrusted to them. They were what we should call ministers without portfolios. As they had from the beginning to watch over the careful execution of the laws by the various judicial and administrative officers so that the laws might be made the means of protection and not of oppression of the weak, they had become naturally the special guardians of the laws in every branch of the administration. Not responsible for the conduct of military, judicial, or financial affairs, they had leisure for general superintendence and for punishment, and could thus help to realise the fundamental principle of the republic, which consisted in the responsibility of the magistrates.

The tribunes as guardians of the laws.

To carry out this object, the tribunes of the people were invested from the first with a special religious sanction and inviolability. This gave them, though they had no imperium and no lictors at their command, an authority, even in opposition to the highest magistrates, which was absolutely indispensable for the supreme guardians of the law. If, like the plebeian ædiles,[1] they had lost their personal inviolability, they would have lost a weapon without which they would have been powerless.

Personal inviolability of the tribunes.

Hence while the republic was in full vigour the tribunes had chiefly the duty of exercising a general control in the name of the senate. As the senate was especially the representative and embodiment of the national mind,[2] and conducted the whole government with regard to external as well as internal affairs, it was absolutely necessary that every magistrate should submit to the will of the senate.[3] By the constitution, it is true, the senate

The tribunes and the senate.

[1] Originally the *ædiles plebis* had been invested with personal inviolability (*sacrosanctitas*) like the tribunes of the people. But in later times, after the establishment of the office of the curule ædiles, it seems that this privilege of the plebeian ædiles fell into abeyance, though it was not formally abolished. Mommsen, *Röm. Staatsr.* ii. 1, 445, 455.

[2] See above, p. 52.

[3] The technical term for this was 'in auctoritate senatus [or patrum] esse.' Liv. iii. 21, 1; 52, 10; iv. 56, 10; v. 9, 4; ix. 10, 1. Or 'senatus auctoritati se dedere,' Liv. vi. 19, 4. See Brisson, *De Formulis*, ii. c. 115.

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had no authority to issue commands to the magistrates. In strict law the *senatus consulta* were but counsels for the magistrates, which the latter could accept or reject as they thought proper.[1] But in the ordinary course of events, it became a rule for the magistrates to consider these counsels as injunctions which, feeling their general dependence upon the ruling body, they did not venture to disregard. But from selfwill or arrogance a magistrate might pursue a policy at variance with the advice of the senate; and in such cases it was possible with the help of the tribunes to compel the magistrates to obey.[2] The senate might always be sure of the services of at least one tribune out of ten, and one tribune sufficed to intercede against the orders of refractory magistrates.[3] But the influence of the senate in the annual elections was so

[1] See above, p. 44.

[2] Liv. ix. 33. Not only the other magistrates, but also tribunes themselves, if they were bent on measures disapproved by the senate, could be restrained by tribunician intercession. Livy, xxxviii. 36, relates an occurrence which is very instructive with regard to this constitutional practice. In the year 188 B.C. the tribune C. Valerius Tappo brought forward a motion to confer the full right of citizenship on the municipia of Formiæ, Fundi, and Arpinum, in place of the *civitas sine suffragio*, which they had possessed up to that time, and to receive them into the Roman tribes. 'Four tribunes opposed this motion, because it had not been made *ex auctoritate senatus*; but they withdrew their opposition on being told that it was the privilege of the people, not of the senate, to confer the right of suffrage on whom they pleased.' The alleged reason for withdrawing the tribunician intercession, it is true, was not in point; for the senate did not claim a privilege which belonged to the people; it did not wish to confer or withhold the franchise, but to give its opinion as to the advisability of the measure at that particular time. Yet the incident shows that, as a rule, the senate took the initiative in legislative measures. Differences of opinion among the body of tribunes, and between tribunes and the senate, were generally settled in an amicable manner by debate in the senate. Liv. xxxix. 4; xxxix. 39, 13.

[3] Intercessions could be resorted to only for the purpose of stopping positive motions or orders; they could not be directed against intercessions. If, therefore, a tribune wished to nullify the intercession of a colleague, he could do it only in an indirect way by threatening that he would intercede against any or all the administrative measures of the executive, whereby the whole machinery of the government would have come to a standstill. By such a threat he might hope to force his colleague to withdraw his intercession. This was of course an extreme measure, resembling a vote against supply in a modern parliament; but it was applied in 184 B.C. Compare the interesting case, Liv. xxxix. 38, 8.

complete, that usually the whole number of ten tribunes unanimously supported the senatorial policy.

Tribunician intercession.

Instances of tribunician intercession in the service of the senate are not rare, but they would have been far more frequent if the dread of them had not kept the magistrates in dependence upon the senate. How far the senate dared to extend its power of controlling the magistrates by means of the tribunes is shown most plainly in a case towards the end of the Hannibalic war, when, in the year 204 B.C., it actually despatched two tribunes to Sicily to arrest the commanding proconsul Publius Scipio, at the head of his army, and to convey him to Rome if he should refuse to comply with its orders.[1] This, it is true, was an exceptional case, perhaps an unconstitutional stretch of power on the part of the senate, for the privileges of the tribunes did not extend beyond the precincts of the town. In the field, where the imperium of the general was unlimited, not even the inviolability of the tribunes would have been respected. But even under these circumstances the obstinate Publius Scipio found it advisable to give way and to submit to the will of the senate. How much more effective must the power of the tribunes have been in ordinary cases, when they were called upon to enforce on the magistrates compliance with the decrees of the supreme council of state in acts of internal administration and government!

The tribunes as public prosecutors.

As a last resort for maintaining the authority of the senate and defending it against self-willed or incapable magistrates, the tribunes directed the public prosecution and punishment of the refractory after the expiration of their year of office. Here again the tribuneship displayed its full importance in the organism of the state; for by

[1] See vol. ii. p. 423. Liv. xxix. 20. Even as early as 310 B.C., according to Livy, ix. 36, 14, the senate despatched tribunes to Q. Fabius to order him not to cross the Ciminian mountains with his army. But, as has been shown (vol. i. p. 418 f.), the stories of the great military exploits of Q. Fabius Maximus in Etruria deserve little credit. The narrative only shows what the annalist thought of the relations between the senate, the tribunes, and the consul.

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virtue of their office they were best qualified to take the part of public prosecutors or of advocates of the state. It is true, the right of accusation belonged to every citizen, and particularly to every magistrate; but a private individual would rarely have enough authority to avail himself of this right, and the other magistrates being the colleagues or the subordinates of an accused offender were hardly qualified to act as prosecutors with the necessary energy or impartiality in cases of malversation arising in a public department with which they were themselves directly or indirectly connected. The tribunes, on the other hand, were free from all such considerations. They had not themselves to conduct any branch of the administration. They took no part in the executive business of the state, and being consequently free from responsibility themselves they could set to work without hesitation to enforce obedience to the laws in others. Thus originated their extensive activity as public prosecutors in state trials, not only before the assembly of plebeian tribes, but also in the comitia of the centuries. The former had the right of imposing fines; the latter alone possessed that of inflicting capital punishment. The tribunes were not empowered to convoke the *comitia centuriata*, but they could request a prætor to call a meeting for the purpose of a capital accusation.[1]

Extent of tribunician prosecutions.

The tribunes were at first restricted in their prosecutions to such offences committed by magistrates as threatened the liberties of the plebs. But when, as we have seen, they had ceased to be merely plebeian magistrates and had become magistrates of the whole community, the sphere of their control became more extensive, and they took cognisance of all sorts of offences of all magistrates without distinction, whether they affected the plebs in particular or the whole of the state.[2] In

[1] Liv. xxv. 3, 9; xliii. 16, 11. Gell. vi. 9, 9. Mommsen (*Röm. Staatsrecht*, i. p. 146) is of opinion that the prætor was in such cases obliged to comply with a tribune's request.

[2] It has been pointed out above (vol. i. p. 151) that such accusations could

this manner an essential condition for the existence and good working of the republican constitution became realised—namely, the responsibility of the magistrates which could now be fully enforced by means of the tribunes, in so far, at least, as was compatible with the tender indulgence extended by the ruling nobility to all their members.

Legislative functions of the tribunes.

It was not only in the department of administration and jurisdiction that the tribunes discharged important public duties. Their share and co-operation in the making of laws was of equal importance. Since the *comitia tributa* and the *comitia centuriata* had been equalised by the Hortensian laws (287 B.C.),[1] the legislation devolved chiefly upon the former, under the presidency of the tribunes. The ordinary course of proceedings was so arranged that the tribunes assembled the tribes at the request of the senate, and laid before them the projects of law previously discussed and agreed upon in the senate. The whole of the Roman public and private law, as far as it was established by formal legislation, emanated, after the passing of the Hortensian laws, from the *comitia tributa* in the manner just indicated. The *comitia centuriata* were entirely superseded, as far as acts of legislation were concerned, by the younger comitia, and in these it was not the consuls or other magistrates but the tribunes who almost exclusively proposed and recommended new laws.

Control of administration by tribes and tribunes.

The same procedure was adopted with regard to the administrative decrees and regulations which were made by the people in the *comitia tributa*. The consent of the people might be obtained for every act of government, and thus the proceedings of the magistrates would be sanc-

not occur in the early period of the republic, before the decemviral legislation, and that all the stories of them reported by Livy (ii. 52; iii. 31; iv. 40, 41, 42, 44; vii. 12) are inventions of the annalists, who unhesitatingly ascribed to the oldest tribunes the powers and prerogatives of later times. Mommsen, who in his *Roman History* (i. p. 275) had adopted all these stories, and had compared the proceedings of the early tribunes with a kind of 'lynching,' not justified by any legal right, has now altered his opinion (*Röm. Staatsrecht*, ii. 1, p. 289, An. 5), and rejects the stories in question as unhistorical.

[1] Vol. i. p. 448.

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tioned. In point of fact these formal resolutions of the people only expressed more distinctly what was always considered indispensable—namely, that the will of the people should in all matters guide and determine the executive. In the ordinary business of the magistrates this might be tacitly taken for granted, and an appeal to the people was therefore only necessary in particularly difficult or important questions. In such cases the senate passed a preliminary decree, which was then laid before the assembly of tribes by the tribunes for their acceptance. Naturally the comitia could hardly refuse to give their formal sanction to a proposal made in this manner, and recommended by the tribunes—their own special representatives—and by the senate, which, acting in accordance with the tribunes, must have enjoyed their confidence. The popular decision was probably in most cases not much more than an empty formality; but it guaranteed the executive officers from the consequences of all possible miscarriages which the course of proceeding in question might occasion.

The tribunes and the senate.

Whilst the tribunes thus carried out the will of the senate in the assembly of the people, they had of course found ways and means to procure for themselves a position in the senate contrasting strongly with the humble part they had at first played in relation to that body. They had no longer to listen to the debates at the door; but they had their seats and voice within that assembly, and even possessed the right of convoking it and putting questions to the vote. More than this, they could by their intercession prevent a senatorial decree from being duly passed.[1] Their position had thus become one of rulers, and if they had in reality embodied the democracy as in the older times, the Roman people would have been very effectually represented in the ruling corporation. But in point of fact the tribunes themselves belonged to

[1] No *senatus consultum* could be made without the consent of the tribunes. If they withheld their consent, it was merely a *senatus auctoritas*. Comp. Mommsen, *Röm. Staatsrecht*, ii. 1, p. 269.

the nobility, and their office was but a step in the way to the higher honours of the republic, which the ruling families shared among themselves. A tribune of to-day might in a few years become a prætor or consul, and the prospect of such a career would naturally prevent reckless opposition to the nobility.

Independence of the tribunes.

But the understanding between the tribunes and the nobility was not founded upon law. It had been formed gradually by constitutional practice. The possibility was not excluded that at any time one or several tribunes might take up an independent position and oppose the senate. This rarely occurred while the rule of the senate was firmly established and maintained. Thus, for instance, the tribune Quintus Bæbius (200 B.C.) contented himself with speaking in public meetings against the declaration of war decided on by the nobility, which, in consequence of the prejudice he had raised against it among the people, was at first rejected in the comitia. Had the tribune wished to assert his right of intercession, the proposal of the consul would not have been put to the vote at all. He contented himself with a kind of modest protest, but dropped even this when the senate resolutely insisted upon the declaration of war; and when the consul Sulpicius convoked the people a second time for the purpose of voting, the resolution was passed.[1] But a radical opposition, based on difference of political principles, was by no means impossible; and if it was resolved upon, as, for instance, by C. Flaminius,[2] the sharp weapons with which the tribuneship was armed from the beginning proved irresistible even to the nobility. If a tribune wished to recommend a line of policy or a law to the people in opposition to the will of the majority of the senators, the senate had no means at its disposal to cross him, except the inter-

[1] Livy, xxxi. 6, 5, gives a very interesting description of the scene which occurred in the senate on this occasion: Ægre eam rem passi patres, laceratusque probris in senatu tribunus plebis. It appears that the opposition of Bæbius to the policy of the senate was at that time an unheard-of novelty; that he had not courage or support enough to persevere in it; and that he easily gave way.

[2] Vol. ii. p. 126.

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cession of another tribune. If this could not be obtained the nobility were powerless. Thus it happened that the agrarian law of C. Flaminius was passed as a kind of protest against the domination of the senate, and it was a most alarming sign of a change from the established order of things to democratic rule. In the same way the Claudian law was passed, which forbade the senators to carry on trade;[1] and in like manner the Gracchi at a later period were able to pave the way for the revolution. Thus the nobility, satisfied with actual rule, were punished for not restricting the authority of the tribunes by law. When Sulla undertook to do this, it was too late.

Abuse of tribunician power.

It is but natural that a power like that of the tribunes should be frequently abused. How would it have been possible to find year after year ten men wise enough to use ill-defined authority of so vast extent with moderation? The personal inviolability of the tribunes combined with actual irresponsibility made all other public functionaries, to a certain extent, subservient to them. Weak minds must have been intoxicated by such exalted prerogatives. Some were carried away to freaks of presumption which seemed to betray actual madness. Thus, in the year 131 B.C., the tribune Atinius Labeo seized the censor Quintus Metellus in the street, and, in revenge for having been turned out of the senate by him, was about to throw him at once from the Tarpeian rock,[2] an act of violence prevented only by the intercession of another tribune. The power of the tribunes appeared less outrageous, though still rather arbitrary, in their right not only of forbidding the supreme magistrates to celebrate triumphs, to convoke popular assemblies, to consult the auspicia, nay, to perform any official business whatever, but of imposing fines upon them at pleasure, of confiscating their property, and even of arresting them.[3] If such forcible measures were re-

[1] Vol. ii. p. 196.

[2] Liv. epit. 59. Plin. *Hist. Nat.* vii. 44.

[3] Liv. epit. 48. Cic. *De Leg.* iii. 9, 20. Plut. *Mar.* 4. Valer. Max. ix. 5, 2. Victor, 66. Flor. iii. 17. Cic. *Ad Att.* ii. 1, 8. Dio C. xxxvii. 50. Cic. *In*

sorted to only in times of extreme need, when the prosperity of the state was endangered by the delinquencies of a magistrate, or if they were applied on the advice and desire of the senate, they proved the political good sense of the Romans, and justified the creation of an office the duties of which approach so near the line where order and anarchy meet. But if the tribunes themselves acted presumptuously and refused to yield to the authority of the senate, then the state could be protected from the arbitrary proceedings of one tribune only by the intercession of another. This intercession of one tribune against another, nay, even the mere possibility of it, prevented on the whole the abuse of excessive official power, at least as long as the republic remained sound and healthy—*i.e.* up to the end of the period now under consideration. When new principles came into action and personal considerations and interests became of more moment than the welfare of the state, the weapon of the tribuneship was employed in the service of the demagogues who brought about the ruin of the republic.

Vatin. 9, 21. Dio, xxxviii. 6; xxxix. 39. See Mommsen, *Röm. Staatsr.* i. 132.

CHAPTER IX.

THE SUBJECTS OF ROME IN ITALY.

BOOK VI. Rome and Italy.

IT has been related in the first volume how in the course of little more than a hundred years, from the fall of Veii (396 B.C.) to the conquest of Tarentum (272 B.C.), the whole of central and southern Italy was made to acknowledge the supremacy of Rome. We have now to see in what manner Rome exercised her dominion, in order that we may understand what appears so very wonderful, that the citizens of a single town were able to assume the undisputed mastery of so large a territory, and to extend their dominion, based upon this power in Italy, over a wide range of foreign countries.

Distinction between conquerors and conquered.

One difference between the Roman republic and the states of our own age we recognise at once in the circumstance that the nations incorporated with the republic were always looked upon as a subject and inferior class, and that almost to the very end of the republic the ruling citizens clung to their privileges and to the natural advantages resulting therefrom. It never occurred to the Romans to recognise their conquered enemies as fellow-citizens, and to bestow upon them equal rights, as is demanded by the more generous and humane spirit of modern public law, and by the sense of justice now almost equally dispersed throughout Europe. On the other hand, the Romans were far from practising that brutality with which the Spartans sought to keep their subjects in continual bondage. They adopted a middle course, which enabled them to preserve their dominion and their privileges, and nevertheless to grant to their subjects so much liberty and security that they clung to the central authority of the state, and felt at

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their ease like members of a living body. At any rate, this feeling lasted until the time when the old republican institutions had become obsolete, and the altered relation of Rome to the subject countries required other forms of government.

Rome and her allies.

The organism of the Roman dominion in Italy was an enlarged copy of the original Rome. In the latter the ruling body consisted of the patricians alone. The plebeians were a distinct body of citizens, without political rights, without a share in the government, but nevertheless bound to serve in war and to bear all the burdens of the state. In a similar manner a difference continued to exist between two portions of the population in the empire formed by the victorious republic. On one side there were the old patricians and plebeians combined now into one body of citizens with equal rights; and on the other, various classes of citizens without rights of voting (*cives sine suffragio*), and the subjects called by the Roman citizens either colonists or allies (*socii*).

The Roman tribes.

Only those members of the community enjoyed the full political rights and privileges of citizens who were inscribed in the censorial lists as inhabitants of the town itself or of the local tribes that extended over the adjoining country. Unfortunately, we have no exact information of the extent and situation of the thirty-five tribes. The four city tribes were the smallest as regards extent, but the largest in population, and the least important in dignity after the reform of Quintus Fabius in the year 304;[1] the sixteen oldest country tribes which had existed at the beginning of the republic were of far less extent than those which were added subsequently, and we may conjecture that in proportion to the distance from Rome the tribes increased in size, a circumstance which to a certain extent was a compensation for the inequality which was inevitably occasioned by their geographical position.

When the thirty-fourth and thirty-fifth tribes had been established, in the year 241 B.C., the geographical limits of

[1] Vol. i. p. 436.

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Completion of the number of tribes.

the tribes remained finally settled. From that time to the period of the civil wars they were not extended any further over Italy.[1] All the districts and towns beyond the boundaries of the citizenship were subject to Rome in some form or other, and differed in political rights from the genuine Romans of whom we have spoken.

Roman colonies.

The only exceptions to this rule were those Roman citizens who belonged to a citizen-colony (*colonia civium Romanorum*). These did not lose their civic rights by settling permanently at a distance from Rome; the name of every individual colonist remained most probably inscribed in the tribe to which he had originally belonged, and he could exercise his full rights of citizenship whenever he was present in Rome. But in point of fact this right lay dormant, for the colonists were obliged to perform garrison duty in their respective settlements, in return for their exemption from ordinary service in the legions,[2] and they were therefore not at liberty to leave the place where they were stationed.

Voluntary adhesion of the Italian populations.

It is a most erroneous though widely prevalent opinion that the whole of Italy was conquered by the force of Roman arms, and joined to the empire against its will. Roman valour and the admirable organization of the legions, it is true, contributed to extend the dominion of Rome, but they were not nearly so effective as the political wisdom of the Roman senate. Although among the Romans, as elsewhere, military success was considered worthy of the greatest admiration, and raised national pride to the highest pitch, and although the annalists were consequently eager to attribute every increase of the Roman power to brilliant victories, an unprejudiced inves-

[1] That is to say, no new tribes were formed after 241 B.C. in addition to the thirty-five tribes then completed. But districts lying beyond these tribes could still be incorporated with one or more of them. Thus in 188 B.C. the municipia of Formiæ and Fundi were attributed to the Æmilian tribe, and Arpinum, the native town of Marius and Cicero, to the Cornelian tribe. Liv. xxxviii. 369.

[2] The exemption of the Roman colonists from military service, at least from service on board the fleet, was afterwards withdrawn. Liv. xxxvi. 3, 4.

tigation of the facts leads to the conclusion that the majority of the Italian population by no means surrendered themselves to the mercy of Rome as conquered enemies, but that on the contrary in many cases the free resolution of the several tribes and the feeling of common interests formed the link which joined them to Rome.[1]

Free allied towns.

We have often been obliged to point out the false representations of the annalists—for instance, with regard to the alliance with the Latins and Hernicans, which formed the basis of the Roman dominion, and the starting-point for all further success.[2] It would detain us here too long to examine the history of all the Roman wars in detail and to point out the parts where more or less concealed traces of such misrepresentation are to be found. But by way of illustration we may remark that Tibur and Præneste, the two most important towns of Latium after Rome, were never conquered and always preserved their independence as free, allied towns,[3] though Roman annalists try to make it appear that they were forced to submission. The case was similar with Naples, Nola, Nuceria, Heraclea, Velia, Locri, Rhegium, Tarentum, the greater part or perhaps all of the Greek towns; with the three Hernican towns Aletrium, Ferentinum, or Verulæ;[4]

[1] The subjects of Rome were called by the honourable name of allies (*socii*). But the manner in which they had become allies was not always the same. It differed widely according to circumstances.. Some had joined Rome on an equal footing by a free alliance (*fœdus æquum*), which implied nothing like subjection. Such was the old league with the Latins and the alliances with several Italian tribes in the course of the Samnite wars. Others sought the alliance of Rome as a protection from pressing enemies or troublesome neighbours. This was called '*per deditionem in fidem venire*,' Liv. viii. 2, 13. Such allies pledged themselves '*maiestatem populi Romani comiter conservare*.' But they were not subdued in war, and their alliance might be as useful to Rome as to themselves. They became the voluntary clients and dependents of the Romans, but as the obligations were not ratified by a *fœdus æquum* they glided more easily than the other allies into the condition of subjects.

[2] Vol. i. p. 153.

[3] Vol. i. p. 292.

[4] These towns had taken the part of the Romans in their war with the Hernican nation. The Romans offered them as a reward the full Roman citizenship, but they preferred keeping their old independence as allies of Rome. Liv. ix. 43, 23. Vol. i. p. 425.

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with Capua and a number of other Campanian towns up to their defection in the Hannibalic war; with a great many tribes or portions of tribes in central Italy who had sided with Rome in the Samnite wars; with a certain part of the Umbrians, Lucanians, and Apulians;[1] and lastly with the majority of the Etruscan towns.[2] The Romans managed in all their wars to procure the friendship of the immediate neighbours and enemies of their opponents, and to turn these to account as allies. The price of such an alliance was a federal union,[3] which in course of time, it is true, changed into a condition of dependence, but which was originally based upon a more or less voluntary compact with Rome, and not upon subjugation by force of arms.[4] When actual conquest took place, confiscations were invariably made on a large scale, and the land thus taken, if it did not remain a state domain, was occupied by or distributed among Roman citizens, or more usually employed for the establishment of colonies. Hence, wherever we find Roman colonies, a previous conquest can be taken for granted. Where this is not the case, the opposite conclusion is admissible, that not subjugation,

[1] Concerning the alliance with Lucanians, Apulians, Marsians, and other Sabellian peoples, see vol. i. pp. 384 f., 404, 422 f., 453, 460. Concerning Teanum see Liv. ix. 20, 4; on Camerinum and Iguvium see Cicero, *Pro Balbo*, 20, 46. Liv. xxviii. 45, 20.

[2] Vol. i. pp. 457, 461, 477.

[3] The same policy was followed in the provinces. In all her wars in Sicily, Spain, Africa, Greece, &c., Rome had the friendship or co-operation of native states. These were recognised as independent allies, and for some length of time were allowed to enjoy certain privileges, more or less extensive, according to the services they had rendered. Such were Messana, Utica, Gades, and Athens.

[4] The Roman policy always favoured the aristocratic party whenever an independent town was convulsed by internal discord. This party, therefore, generally looked for protection to Rome and provoked Roman interference, sacrificing rather the independence and the interests of their country than the advantages of their party. This was done in Arretium (vol. i. p. 457), Volsinii (vol. i. p. 479), Tarentum (vol. i. p. 493), and many other places. If the democratic party resisted, war was the consequence. The Romans furnished aid to their friends, and when they had succeeded in overthrowing the democratic party and establishing the nobles in power as their clients, they represented this interference as a war of conquest.

but a voluntary alliance, brought about the union with Rome.

Effects of the Hannibalic war.

In consequence of the Hannibalic war great changes took place in many parts of Italy. The communities which had declared themselves for Hannibal suffered for their disloyalty by the loss of the liberties they might have enjoyed before. Now, indeed, a large portion of Italy was subjected by force of arms which had previously been on terms of free alliance with Rome. The most distinguished victims of Roman vengeance were Capua and the neighbouring Campanian towns which had fallen off from Rome with Capua. A large number of more obscure towns in Samnium, Apulia, and Calabria, especially the tribes of the Picentes on the Silarus and the Bruttians, underwent the same fate. Large tracts of land were now for the first time confiscated, and upon them Roman veterans were settled or regular colonies established; but extensive districts also remained public domains. Thus, indeed, a considerable portion of Italy was conquered by Rome; yet even now it cannot have been the greater part. The majority of the Italian and Greek allies had remained faithful to Rome; many had only wavered in their fidelity; among all of them there had been at all times a party favourably disposed towards Rome, and in many cases the partisans of Rome had brought about a revolution, had driven away or cut down the Carthaginian garrisons, and had handed over the towns to the Romans. In such cases we can scarcely speak of a Roman conquest, although the Romans behaved like conquerors in cruelly punishing whole communities for the hostility of their leaders.

Roman federal government.

The federal form of the Roman government which remained when it had embraced all Italy was a full development of a germ discernible in the oldest constitution of the Roman families and their combination into *gentes* and tribes. The alliance of patrician families, *gentes*, and tribes, formed a compact political body which stood for some time in the relation of an imperfect union with the ple-

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beians. When it had absorbed them, the new and enlarged community formed a federation with the Latin towns. In course of time the federal character of this union was changed into one of Roman dominion, which became fully established by the issue of the great Latin war. By this war the majority of the old allied towns lost their independence and became Roman municipalities. Then the same principle of federation was repeated on a larger scale. The Latin colonies sent out by Rome into conquered districts took the place of the old Latin towns as allies of Rome, and by their side were placed with equal privileges the foreign allies who had assisted Rome in uniting Italy into one great state.

Character of the Roman colonies.

The Latin colonies, which were sent out for the most part in the time of the Samnite wars, were the most efficacious means for securing the possession of the subject countries, and for Romanising them. Their chief purpose was military; it was only a secondary result that they furnished a provision for the poorer citizens. Whoever took part in them, whether Roman citizen or Latin, received the rights of the Latins, which included the private rights of the Romans, but excluded the right of electing and being elected to public offices in Rome.[1] It was only under special circumstances that a Latin colonist was allowed to acquire all the Roman civil rights—namely, when he had held some municipal office in his colony, or when, on removing to Rome, he left a family behind in the colony.[2] All the Latin colonies enjoyed local self-

[1] A Roman citizen, accordingly, who took part in a Latin colony lost the most valuable of his rights (the *ius suffragii* and the *ius honorum*): he suffered what was called a *capitis deminutio*.

[2] At one time or other a difference of right was established between one set of Latin colonies and another; for Cicero (*Pro Cæcina*, 35, 102) speaks of the rights of 'twelve colonies' who, like the colonists of Ariminum, could inherit from Roman citizens. After numerous speculations on this subject (see especially Savigny, *Vermischte Schriften*, i. p. 18 ff.), the opinion of Mommsen (*Röm. Münzwesen*, p. 317 ff.; *Röm. Gesch.* i. p. 424) is now generally accepted, that the colony of Ariminum (268 B.C.), the first colony beyond the confines of Italy proper, received more restricted rights than the older Latin colonies, and that the eleven colonies which were subsequently founded were treated likewise.

government. They elected their annual magistrates in the same manner as the popular assembly did at Rome, and had their own senates constituted and organized like that of Rome. They paid no tribute, at least not in a direct and formal manner,[1] but only furnished their contingents to the Roman army, and were bound to provide for the pay, though not for the equipment, of these troops. The towns which, without being colonies, were in so-called alliance with Rome, held a similar position, without, however, enjoying the same facilities for acquiring the full franchise. Each of them was likewise a copy of Rome as far as internal organization was concerned, having its own senate and local magistrates elected by the community. Rome had taken care that in all these cities an aristocratic form of government should be established, and contrived to secure the attachment of the communities by favouring the local nobility.

The position of the Italian allies.

On the whole, the condition of the allies, Latin colonists as well as confederated Italians, seems to have been satisfactory, at least in the earlier period. This is proved by the circumstance that arms were entrusted to them, and that they usually furnished a larger contingent to the Roman armies than the Romans themselves. The privilege of bearing arms was not accorded to the inhabitants of the provinces, and in comparison with the provincials who had to pay an annual tribute or ground-rent to the governing state, the Italians might consider themselves as partners with the Romans in the sovereignty exercised

In what respects the rights of these 'twelve colonies' differed is not certain. They seem to have had the *commercium* with Rome, but not the *connubium*, and less facility of acquiring the full Roman franchise than the older colonies.

[1] The exemption from direct taxation did not prevent exactions of various kinds from Roman magistrates, which at times proved very burdensome. Such were the 'voluntary' contributions of allied towns to festivals and triumphs at Rome (above, p. 155; Liv. xxxix. 5, 7; xl. 44, 12), or even for military expeditions (vol. ii. p. 418). Contributions of this kind were 'voluntary' as much as the 'benevolences' of English history were prompted by benevolence, and no more. The travelling expenses of Roman officials were also at the charge of the localities which lay on their way, and may occasionally have been equivalent to a regular tax.

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over dependents. The Italians enjoyed the honourable name of allies (*socii*), and Rome abstained from interfering in their national customs, their language, their privileges, and above all in their religion. Under the dominion of Rome a durable peace reigned throughout the length and breadth of Italy, such as had not been known before. The people were protected from the invasions of barbarous enemies by the combined military strength of the republic. The participation in the wars waged by Rome must have been attractive and profitable for the warlike youth of Italy, and many an ally doubtless returned to his home richly laden with booty. Hence the Italians naturally remained loyal to Rome until the irresistible Hannibal persuaded some of them to disown their allegiance. At that time the idea was conceived in Rome by some far-sighted politician, that it might be possible to unite the Latin allied towns more closely to the mother city by selecting two delegates from each of them for seats in the Roman senate. This most salutary advice was unfortunately rejected by the pride of the old nobility.[1] Nevertheless, all the colonies remained faithful, and the failure of Hannibal's attempts to shake their allegiance is the strongest proof that the Roman supremacy was firmly rooted in the attachment and interests of the allies.

Isolation of the allies.

But there was, nevertheless, in the relation between Rome and her allies an inequality, a kind of injustice which could be overlooked only so long as, on the one hand, Rome did not abuse her position, and, on the other hand, the subjects did not fully become conscious of their own strength. Rome was aware from the very beginning that her power depended upon the division of the subject towns. It was therefore in her interest to sever the links which bound the Italian peoples to one another, and to prevent the formation of new ones. The old confederacies were everywhere dissolved. Every town was separated from the rest and connected as an isolated unit with Rome. No Latin or citizen of any town allied with Rome

[1] Vol. ii. p. 287.

was allowed to acquire landed property anywhere but in his native town[1] or else in Roman territory. Nor could he contract a legal marriage with a native of any other allied town, being confined in his selection to his own fellow-citizens or to Romans. This right of intermarriage and of buying land being permitted between Rome and every individual town subject to Rome, but refused to these towns with one another, proved a restriction which not only lowered the dignity of the allies, but injured them in their material prosperity, and led slowly but surely to their impoverishment, and to a preponderating power of the Roman capitalists. A Roman could compete for the purchase of land in any district of Italy, but by the side of him no Italian was admitted as purchaser unless he was a member of the community in which the property was situated.[2] The absence of complete freedom in the right of buying and selling land prevented the free circulation of capital, and, to a certain extent, bound the Italians to the soil. If in addition to this unnatural restriction we consider the advantage which every Roman citizen had over the allies in all other commercial and legal transactions, we can understand that the

[1] This important restriction was contained in the rule that they should have no *commercium inter se* (Liv. viii. 14), by which each community was to a certain extent isolated. When Macedonia was divided into four districts, in 168 B.C., the same rule was adopted. Liv. xlv. 29, 10: Pronunciavit Æmilius Paullus neque connubium neque commercium agrorum ædificiorumque inter se placere cuiquam extra fines regionis suæ esse. In this passage the addition 'agrorum ædificiorumque' points out distinctly to what restriction in buying and selling the refusal of the 'commercium' chiefly had reference. The consequence was that, as the people of Macedonia complained (Liv. xlv. 30, 2): Regionatim commercio interruptis ita videri lacerata omnia tanquam animali in artus alterum alterius indigentis distracto.

[2] In Sicily the citizens of Centuripæ alone had unlimited *commercium* in all Sicilian communities. The consequence was that they had everywhere acquired landed property: *e.g.* 'agri Ætnensis multo maximam partem,' Cicero, *Verr.* iii. 45, 108. Thus Centuripæ became the wealthiest town in all Sicily (Cicero, *Verr.* iv. 23, 50), whilst at the same time the number of landowners decreased (Cicero, *Verr.* iii. 51, 120). The Roman citizens had all over Italy the same right, and the consequent advantages, which the people of Centuripæ had in Sicily, and the landed property passed by degrees into their hands.

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inferiority in political rights was one of the causes which exterminated the Italian peasants, and covered the peninsula with overgrown private estates, peopled and worked by slaves. We cannot, therefore, be surprised that by the side of Rome all the once flourishing towns of Italy began to decay in spite of universal peace; that the enterprising Greek colonies,[1] and the industrious Etruscan towns declined more and more, whilst Rome grew rapidly to huge dimensions. We cannot wonder that even the Roman colonies decreased in population and wealth,[2] and that means had to be adopted from time to time to send back to their homes the numbers of Latin colonists who were drawn to Rome by the advantages and pleasures of the capital, and by the prospect of acquiring, though by deception and fraud, the rights of citizenship.[3]

Decay of Italian agriculture.

The economical decay of Italy was hastened still more by the competition of provincial with Italian agriculture. Sicilian and Sardinian corn was brought to Rome in large quantities, and sold at such low prices that the Italian peasants found no market for their own produce. If manufacturing industry had been developed largely in Rome and other Italian towns in proportion to the decrease of agricultural industry occasioned in the above-mentioned manner, the Italians might perhaps have found other means of subsistence. But industry and trade, which had flourished in all the Greek and Etruscan towns in the time of their independence, seemed paralysed from the moment they were incorporated with Rome. They became more and more impoverished and depopulated, and Rome did not attract the trade they lost. It seems that there was

[1] Liv. xl. 18, 4.

[2] Liv. xxxii. 2, 6; xxxvii. 46, 9: Ex Gallia legatos Placentinorum et Cremonensium L. Aurunculeius prætor in senatum introduxit. Iis querentibus inopiam colonorum, aliis belli casibus, aliis morbo absumtis, quosdam tædio accolarum Gallorum reliquisse colonias, decrevit senatus, uti C. Lælius consul, si ei videretur, sex millia familiarum conscriberet, quæ in eas colonias dividerentur. Liv. xxxix. 23, 3: Sp. Postumius consul renuntiaverat se desertas colonias Sipontum supero, Buxentum infero mari invenisse. Liv. xliii. 17, 1.

[3] Liv. xxxix. 3, 4; xli. 9, 9; xlii. 10 2.

capital enough in the centre of the Roman empire; but it was more profitably employed in the financial service of the state, such as great public contracts, in the farming of the revenue, and in money-lending transactions. The Italians could not participate in these financial operations, which, as is tolerably certain, were a monopoly of the Roman knights. Roman citizens alone were allowed to enjoy the advantages which were, to a certain extent, the price of victory that Rome carried off as the ruling power. In this, as in other respects, the Italian allies, though they had contributed a fair share towards the establishment of that commanding position which opened to Roman citizens the road to honours and wealth, were excluded from participation in them.

Suppression of local law.

But even the right of self-government which Rome had left to the Italian communities proved an illusion in all cases where the interests of the ruling town seemed to require it. A law passed in Rome,[1] nay, a simple senatorial decree,[2] or a magisterial order, could at pleasure be applied to the whole of Italy. Roman law gradually took the place of local laws, though the Italians had no part in the legislation of the Roman people, or any influence on the decrees of the Roman senate and magistrates. The criminal jurisdiction throughout Italy, not only in cases of political offences but also of crimes endangering the safety of individuals, such as conspiracy, murder, robbery, poisoning, plunder, and violence, was exercised by the Roman senate through the ordinary magistrates or special quæstors appointed, as occasion seemed to require.[3] All public works in Italy, such as roads, aqueducts, and temples, were carried out solely for the benefit of Rome;[4]

[1] The Roman law of debt was extended in 193 B.C. by a plebiscitum to the towns of the Italian allies. Liv. xxxv. 7, 4: M. Sempronius tribunus plebis ex auctoritate patrum plebem rogavit plebesque scivit, ut cum sociis ac nomine Latino creditæ pecuniæ ius idem quod cum civibus Romanis esset.

[2] Such as the 'Senatus consultum de Bacchanalibus.' Liv. xxxix. 18.

[3] Polyb. vi. 13, 4. Liv. ix. 26, 5; xxviii. 10, 4; xxix. 36, 10; xxxii. 26, 10; xxxix. 18.

[4] Sometimes in the interest of colonies or municipia of Roman citizens. See Liv. xli. 27. Occasionally in that of individual members of the Roman

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improvements and embellishments were lavished upon the capital after victories gained in conjunction with the allies, and necessarily called forth envy and displeasure among the latter, who felt that they were treated with injustice and disdain. Triumphs and festive games were celebrated only for the entertainment of the capital;[1] and the more the capital became the great attraction for men in search of profit or amusement, the more were the provincial towns depopulated and impoverished.

Military burdens of the allies.

Not in peace only, but also in the time of war, the allies were gradually made to feel how heavily the hand of Rome weighed upon them. Although, as may be easily supposed, the original treaties of alliance or the terms granted to the conquered contained minute stipulations with regard to the military service imposed on the allies, it is not probable that these stipulations were regarded by the Romans as a restriction to their demands. According to their convenience and the exigencies of the moment the Roman government called upon the allies for troops in numbers exceeding more or less the normal amount. The rule was that the allies should furnish and pay as many foot soldiers and twice or three times as many horse as the Romans. But as early as 296 B.C., when the Roman army consisted of four legions—*i.e.* sixteen thousand eight hundred men—no less than twenty-seven thousand men were levied among the allies.[2] The same capricious treatment of the subject states is apparent throughout.[3]

nobility: as at Terracina, where the censor Æmilius Lepidus caused a dike to be constructed, by which his own estates in the neighbourhood were benefited. Liv. xl. 51, 2.

[1] It was a rare exception when a few trophies gained in war were distributed as ornaments for Italian towns outside Rome. Liv. x. 46, 8: Spoliorum tanta multitudo fuit, ut non templum tantum forumque iis ornaretur, sed sociis etiam colonisque finitumis ad templorum locorumque publicorum ornatum dividerentur.

[2] Liv. x. 18, 3, 4.

[3] A comparison of the strength of the Roman armies from 193 to 188 B.C., according to Livy (xxxv. 20, 4; xxxv. 20, 11; xxxv. 41, 7; xxxvii. 50; xxxviii. 36, 3), shows that, assuming the legion at that time to consist of 5,200 men on foot and 300 horse, there were raised 115,500 Romans against nearly 200,000 allies, without counting the *socii navales*. It deserves particular

Moreover, in the field the allies were sometimes subjected, at the hands of commanders, to ill-usage or injustice, which at times led to mutinies. A case in point occurs as early as 260 B.C. in the first Punic war.[1] At the close of the Hannibalic war the Roman troops were allowed to return to their homes, but those of the allies were obliged to continue their military service. The same thing happened in the year 199 B.C. in Gaul.[2] The Roman citizens were further protected by the Valerian and Porcian laws from arbitrary and degrading punishments, and even in the field a distinction was made in the blows which they and the soldiers of the allied contingents had to suffer from the centurions.[3] In the distribution of land and booty the allies were almost always unfairly treated,[4] and were at the same time employed for the lowest and most disagreeable work, especially for service on board the fleet.[5]

notice that on one occasion 6,200 allies and only 1,050 Romans, on another no Romans at all but only allies, were sent to serve in Spain, where the service was especially irksome, dangerous, and in consequence unpopular. Again, in 181 B.C. the army sent to the unwholesome island of Corsica, where no booty was to be expected, but plenty of danger and hardship, consisted of 8,300 Italian allies without any contingent of Roman citizens. Some of the quoted numbers may be doubtful, as the manuscripts are often untrustworthy in this particular (see Weissenborn, note to Liv. xl. 36, 6), but the result we have arrived at is not likely to be very materially affected by any inaccuracy in detail.

[1] Polyb. i. 24.

[2] Liv. xxxii. 1, 5.

[3] The Roman soldiers could be beaten only with vine branches (*vites*), the allies with cudgels (*fustes*). It would be interesting to know wherein the distinction lay. On the third Lex Porcia see Lange, *Röm. Alterth.* ii. pp. 198, 234, 521.

[4] Liv. xii. 13, 7: Sociis dimidio minus quam civibus datum. When, in 173 B.C., lands were distributed in Liguria, each Roman received ten jugera, each Latin only three. Liv. xlii. 4, 4. It was an exception when the allies received equal shares with Roman citizens; for instance, in 178 B.C., according to Liv. xli. 7, 3: Militibus denarios quinos vicenos, duplex centurioni, triplex equiti ambo [Ti. Gracchus et L. Postumius] diviserunt, sociis tantundem quantum Romanis. Again in 167 B.C., Liv. xlv. 43, 7: De præda militibus in singulos quadragenos quinos denarios, duplex centurioni, triplex equiti, sociis nominis Latini quantum civibus, et sociis navalibus dedit quantum militibus.

[5] Hence the name *socii navales* for sailors and marines. The surprising number of Roman deserters in the wars with Carthage can only be explained by assuming that they consisted of such men to whom the service was hateful,

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Increasing oppressiveness of Roman rule.

In proportion as with the increase of their power the Romans felt more and more secure and independent of the allies, they showed them less consideration and tenderness, and made them feel that they had gradually sunk from their former position of friends to be no more than subjects. The differences in the amount of rights or privileges enjoyed by the various towns disappeared by degrees as in the minds of the Romans the recollection of the services by which privileges and immunities had been purchased became fainter. Thus all the allies were gradually reduced to the same level of dependence, although at first there had been various degrees of rights and liberties among them. The authority which the Roman governors exercised over the foreign provinces accustomed them also in Italy to treat the allies contemptuously and brutally. Then began their habit of asking the allied communities for aid when they wished to exhibit public games at Rome, and the practice of exacting extraordinary supplies of materials for war.[1] It must have been difficult for the subject towns to refuse such demands, as a Roman magistrate had in war as well as in peace abundant opportunity of showing his favour and his displeasure to a dependent community. They had even to suffer from the exactions and rapacity of Roman citizens who were not in official position.[2] Not being Roman citizens themselves, they could neither claim the protection of the laws nor call for the intercession of the tribunes, and were limited to the precarious help afforded them by Roman nobles who acted the part of their patrons. We see from a story related by Livy to what length of insolence a Roman might go in the treatment of the allies.[3] In the year 173 B.C. the

and who were treated hardly better than slaves. The condition of the rowers on board the ancient galleys must have been almost as bad as that of galley-slaves. Thus we find an easy explanation of the mutiny which threatened to break out in 259 B.C. among Campanian allies destined for service in the fleet. Zonar. viii. 11. Comp. Liv. xxiv. 23, 10: Transfugæ, quorum maxima pars ex navalibus sociis Romanorum erat.

[1] Above, pp. 155, 185, n. 1.

[2] According to Cicero, *Ad Quint. fratr.* i. 1, 11, even Roman citizens had to complain 'non tam de portorio quam de nonnullis iniuriis portitorum.'

[3] Liv. xlii. 1, 7.

consul L. Postumius Albinus was ordered to go to Campania for the purpose of more accurately determining the boundaries of the state land in that part of Italy, and thus protecting it from the encroachments of private landowners in the neighbourhood. His road took him through the free allied town of Præneste. He owed the Prænestines a grudge, because they had taken no notice of him when on a former occasion he had passed through their town in a private capacity. Being now in the possession of official power and dignity, he resolved to teach the subjects how they ought to behave towards a Roman nobleman. Before he started from Rome he sent a message to Præneste and ordered the magistrates to come out to meet him, to prepare quarters for him and his suite, and to provide horses for the continuation of his journey. Hitherto this had not been customary. Magistrates travelling in the affairs of the state were usually lodged by their friends and could claim only a single horse each. But the Prænestines considered it advisable promptly to obey the behests of Postumius, and thus a precedent was created which was but the beginning of ever-increasing demands on the part of the Roman magistrates.

Roman outrages on the allies.

But the arrogance of Postumius was after all a moderate enforcement of official power in an independent community compared with what other Romans dared to do.[1] A young Roman who had not even risen yet to the dignity of a magistrate, but was travelling merely as a legate (*pro legato*), met in the neighbourhood of Venusia a peasant from that Latin colony who, on seeing the litter (*lectica*) in which the young nobleman was lying, asked jokingly whether a dead man was being carried along. On hearing this the Roman at once stopped and caused the peasant to be whipped with the straps of the litter until he was dead. This brutal murder, as it appears, was left unpunished. The deed may have appeared to a true Roman justifiable or even necessary for upholding

[1] Gellius, x. 3, 5.

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the majesty of the Roman name. Another occurrence is perhaps still more characteristic.[1] A Roman consul travelling in the company of his wife had reached the town of Teanum Sidicinum, where he remained for a while. The lady had a wish to bathe in the public bath of that place used by men. The quæstor of the town was ordered by M. Marius, the supreme magistrate, to turn out the bathers at once and place the bath at the disposal of the Roman lady. But this order was not executed quickly enough to please her; nor did she consider the bath suitably prepared. As a punishment for this negligence, Marius, on the command of the consul, was stripped in the market-place of the town, tied to a post, and flogged with rods. A similar offence seems to have given umbrage to a Roman prætor at Ferentinum. Two magistrates of this place were called upon by the prætor to justify themselves for their negligence;[2] one of them, for fear of being treated like Marius of Teanum, threw himself from the wall, the other was seized and flogged. No wonder that after such proceedings the authorities in the Italian towns decreed that during the presence of a Roman magistrate nobody should make use of the public baths. It is astonishing that Roman officials who indulged in such fancies ever succeeded in departing alive from a town inhabited by free men. We should think that death must have appeared preferable to a life exposed to such outrages.

Discontent of the allies.

The occurrences just related took place in the second half of the second century B.C., and were probably extraordinary instances of tyrannical excesses; for they are referred to in a speech of C. Gracchus in which he urges a reform in the legal standing of the allies. But even allowing this, we have reason to think that such deeds would not have been possible and would not have been attempted, if the general conduct of Roman officials in their treatment of the allies had not been in a high degree overbearing, brutal, and regardless of the common

[1] Gellius, x. 3, 3. [2] Gellius, *ib.*

rules of justice and humanity. If we contemplate on the one hand the dominant position of Rome, and the advantages derived by the allies from a union with her, and on the other hand the numerous insults, exactions, and disadvantages to which they were exposed, we may be at a loss whether to admire more the strength and durability of the government thus established or the courage with which some of the oppressed peoples ventured at last to draw the sword in the hope of reconquering their former liberty. The Hannibalic war was the severest test of Rome's qualification to rule over Italy. She stood it, not, it is true, without great risks and sacrifices, but yet with firmness, dignity, and success. The greater part of the subjects remained loyal, or at least obedient. But from time to time, before as well as after that great war, disturbances broke out which prove that the subjects did not invariably feel happy under Roman rule. A striking instance is the revolt of the insignificant town of Falerii in the year 241 B.C., the last year of the first Punic war.[1] What the occasion was, is not reported, but of the consequences there can be no doubt. Falerii was reduced in a few days, and was probably deprived of the liberties which till then it had enjoyed as an allied town. It lost a part or perhaps the whole of its territory, and became an open village deprived of the rights of a town. Thus one more was added to the number of those places of which the Romans could say that they had conquered them with the sword, and the conquest of Falerii among others furnished for a Roman family the pretext for triumphal honours.

Causes tending to a social war.

What has been said of the condition of the Italian subjects foreshadows the events which were in store for the period to come. It is evident that the inequality of the Italian peoples in civil rights could not last much longer. As long as a consciousness of inferiority to Rome as the leading power in Italy prevented among the Italians the growth of rivalry and the impatience of unfair treat-

[1] Liv. epit. 30. Polyb. i. 65. Zonaras, viii. 18. Oros. iv. 11. See vol. ii. p. 123.

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ment; as long as the republic achieved in rapid succession beyond the sea the great conquests in the advantages of which the allies could share, and by the grandeur and glory of which they also were inspired and raised like the Romans themselves to an eminence above rival nations; as long as the Romans used their privileges on the whole with some degree of moderation, and did not seek to reduce to a still lower level the condition of their subjects; so long the confederacy remained a firm support of the Roman power. But when, in consequence of the greatness of the dominant town, Italy was threatened with economical ruin, when the Italians began to play a part in the internal policy of the republic, and the demagogues to court their favour, then the old organization of the state could be maintained no longer, and the inequality between Romans and Italians was doomed to disappear in the torrents of blood with which the social war inundated Italy.

CHAPTER X.

THE PROVINCES.

CHAP. X.

Objects of Roman provincial government.

THE extension of the Roman dominion over the whole of Italy was but the natural development of the germs contained in the spirit of the Roman people, and in the form of the oldest constitution. The confederacy for peace and war among the oldest gentes and tribes, as we have seen, embraced by degrees the whole of Latium and the neighbouring countries, and spread with various modifications and gradations over the cognate races of the Sabellians as well as the Greeks and Etruscans who were of a different stock. But when this development had reached the boundaries of the peninsula it came to a standstill. The Roman dominion extended to islands and countries beyond the sea, but the conquered nations were no longer admitted into the union of arms with the peoples of Italy. They became tributary subjects. Herein lies the fundamental difference between Italy and the provinces. Rome could not entrust arms to the provinces. She had to keep them in subjection by Italian troops, and it was important to reduce as much as possible the expense of this military dominion. Hence the inhabitants of the provinces were never regularly admitted to military service; it was only in exceptional cases that Rome levied irregular troops in those parts,[1] or employed mercenaries from the provinces to serve in connexion with the legions. The provin-

[1] Thus in the year 192 B.C., when an invasion of Sicily by Antiochus was apprehended, the senate decreed, according to Livy, xxxv. 23, 7: Ut prætor L. Valerio collegæ scriberet, periculum esse, ne classis regis Antiochi ex Ætolia in Siciliam traiiceret; itaque placere senatui, ad eum exercitum quem haberet, tumultuariorum militum ad duodecim millia et quadringentos equites scriberet. . . . Eum dilectum prætor non ex Sicilia ipsa tantum sed ex circumiacentibus insulis habuit. Compare also Liv. xxxvii. 2, 8.

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cials were obliged to fulfil their duties towards Rome by paying tribute. The provinces were regarded as estates belonging to the Roman people,[1] and the chief object in their administration was the financial advantage to be obtained from them. They were to Rome what the Indian possessions were to England as long as they continued to be governed by the East India Company, and as long as the dividends of the holders of India bonds were the first consideration. Raising taxes was the most important business of the government; the security and prosperity of the provinces were but of secondary moment, and were only attended to because otherwise the productiveness of these countries would have been jeopardised.

Degrees of provincial subjection.

It is evident from the above that the Romans were far from practising a systematic oppression of the provincials. When the opposition encountered by the Romans in Sicily, Sardinia, Corsica, and Spain, in Africa and Macedonia, was once put down, these various countries were not treated with greater severity than appeared necessary to keep them in complete subjection. Confiscations of land were resorted to, just as in Italy, only when hostile towns had been conquered by force of arms after a stout resistance. The territory belonging to such towns became public property (*ager publicus*). All those communities accordingly which had either sided with the Romans from the first or had joined them during the course of the war of conquest, or which had surrendered on certain conditions before their situation became desperate,[2] were placed in more or less favourable circumstances. For in the provinces as in Italy[3] it was not every town that fell into the hands of Rome by actual conquest. For this reason we can distinguish various degrees of subjection. There were, first, allied towns (*civitates fœderatæ*), like Messana, Massilia, Gades, Athens, and others, which en-

[1] They are called *prædia populi Romani* by Cicero, *In Verr.* ii. 2, 3, 7.

[2] These are the towns which Appian characterises (*Bell. Civ.* i. 102) as πόλεις ὅσαι ἑαυτὰς ἐγκεχειρίκεσαν ἐπὶ συνθήκαις ἑνορκοι.

[3] Above, p. 180.

joyed almost complete independence like the allied Italian towns; secondly, towns free from tribute (*immunes*), like Utica, Chios, Smyrna, Ephesus, Troas, and others; thirdly, tributary towns.[1] All of these retained their municipal self-government, their original laws, their senates, their magistrates, and their popular assemblies. For Rome could not have taken upon herself the burden of administration in all these numerous communities even if she had been inclined to establish a complete centralisation of government. In one respect alone the Romans invariably interfered. They took care to establish in every town an aristocratic form of government. In other respects their indulgence went so far as to leave their old constitution to towns which had not deserved immunities by services rendered, but had resisted to the last. In fact, if they did not decide on utterly destroying such a town (like Carthage), or degrading it into a village (like Capua), they had no alternative but to allow it the means of governing itself. One change only was deemed necessary for the interests of the ruling state. In order to avoid revolts against the dominion of Rome, every town was politically isolated, and even in its economical relations severed from the other subject towns. We have seen that the full freedom of commercial exchange (*commercium*) was not granted to the various allies, and thus in the provinces as well as in Italy the right of buying and selling land was laid under restrictions which in course of time had the effect of making Roman citizens the principal landowners to the exclusion of the provincials. In Sicily only privileged communities like Centuripæ and Panormus had the right of purchasing land everywhere, and the citizens of the first-named town were consequently landed proprietors [2] in all parts as well as

[1] Even this lowest class of towns was sometimes dignified with the name of 'free,' a term often used in a wide and vague sense to denote communities enjoying ever so small a degree of local self-government. The Romans having no central administration for the provinces could not busy themselves with the minutiæ of local affairs, and left the management of all the detail in the hands of each community, only reserving for themselves a general supervision and the right of exacting all the services which the interest of the state required.

[2] Above, p. 187, n. 2. Cicero, *In Verr.* iii. 45, 108; iv. 23, 50.

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Roman citizens. Small properties disappeared more and more, and gave place to large estates worked by slaves. The result of this change was seen in the year 134 B.C., and again in 102 B.C., when most horrible servile insurrections broke out which assumed the proportions of regular wars, and laid waste the most beautiful and fertile parts of the Roman dominions.

Provincial trade.

To what extent the trade of the provinces was restricted in the interest of Rome, we do not know. But that it was not quite free is evident from an incidental remark of Polybius, who reports that the exportation of corn from Sicily to Rhodes was allowed on one occasion by a senatorial decree as a special act of favour.[1] Hence we may infer that other exports as well as that of corn were regulated and restricted in a manner conformable with the commercial policy of the Roman government. In spite of such obstacles to trade and industry, which could produce injurious effects only in long periods of time, the provinces might have felt happy under Roman rule, had not the indulgence with which Rome treated them been more than counterbalanced by the nature of the administration to which they were subjected. As the republic was governed by annual magistrates, elected by the people, it was impossible to carry on the administration of the provinces differently from that of Rome. Annual governors were employed, men who entered the provinces as strangers and left them as strangers, who took no lasting interest in the prosperity of the provincials, who, even if they were honest and conscientious, could not have the knowledge and experience requisite to discharge effectively the important trusts confided to them. Yet this incapacity was the smallest obstacle to a good administration. Another evil very soon sprang up which became fatal to the unhappy provinces, and counteracted all the advantages which the Roman dominion might have brought with it.

The Roman nobles, acting on the universally acknowledged principle that the provinces were to be made to

[1] Polyb. xxviii. 2, 5.

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Roman provincial governors.

yield a profit to the ruling people, and that they were the public domains or farms of the Romans,[1] employed their position as governors to satisfy both their ambition and their cupidity. There was in every Roman a latent capacity to act as a tyrant, and this was a germ which expanded and grew with frightful luxuriance on the favourable soil of the provinces. Far from Rome, released from all the restrictions which the intercession of colleagues or tribunes exercised within the city for protection from violence, removed from the sphere and the influence of public opinion, furnished with absolute military power over defenceless subjects, the governors were indeed exposed to temptations which better men in a similar position would hardly have resisted. It was their duty to defend the provinces against hostile attacks, to preserve internal peace, and above all to enforce the payment of the tribute. If they fulfilled these duties, the Roman citizens and the Roman government were content, without troubling themselves about the manner in which the inhabitants of the provinces were treated. Thus the governors had a wide scope for the exercise of their power, and it was not long before the lamentations of the oppressed and plundered subjects were heard in Rome. We have seen how the hard-hearted Marcellus treated the Syracusans.[2] His cruelty and rapacity might be excused by the long and desperate resistance which the ill-used town had made. But soon after this time aius LucrCetius robbed not the enemies but the allies of Rome, 171 B.C.,[3] and about the same time such bitter complaints came from Spain,[4] that a judicial investigation into the conduct of the Roman officer was considered necessary. But this investigation proved utterly ineffectual. It was a mockery of law, the first of a long series of similar failures of justice in the futile attempt to protect the provinces from the exactions and cruelty of their governors. For the Roman republic, in spite of many endeavours, never succeeded in establishing such an

[1] Above, p. 198. n. 1.
[2] Vol. ii. p. 371. Liv. xxvi. 29.
[3] Vol. iii. p. 220. Liv. xliii. 4.
[4] Vol. iii. p. 378. Liv. xliii. 2.

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organization in the administration of justice that influential offenders could be prosecuted with any prospect of success. Matters were not mended by the establishment of a standing law court (the *quæstiones perpetuæ repetundarum*), in the year 149 B.C.,[1] which appeared at least to indicate the good intention of the people. The judges of this court being taken from the senate belonged to the same class as those whom they were called upon to bring to justice. Common interests and common views of morality and law united the judges and the accused, and combined to frustrate the expectations of redress which the outraged provincials from time to time ventured to entertain.

Growing arrogance of Roman officials.

Small consolation could be derived by the suffering provinces from the reflection that the men who oppressed them threatened the liberty of Rome at the same time. It was but natural that men who had enjoyed the luxury of unlimited rule in the provinces should forget the duty of obedience at home. The regular alternation of obeying and commanding, which was and is the primary and fundamental law of republican institutions, was disturbed. Even the elder Scipio had enjoyed a foretaste of monarchical honours and power.[2] No wonder that after several years of government in the provinces he began to play the master in Rome, and that when called upon to account for the disposal of public funds he had the audacity to tear up the accounts and to cast the fragments at the feet of his accusers. How gratifying, in contrast with the despotic arrogance of these model heroes of the model republic of antiquity, is the modesty with which in our time a Governor-General of India, whose power is far greater than that of any Roman proconsul ever was, retires, after years of kingly rule and state, to the narrow circle of civil life, with no other reward than the consciousness of fulfilled duties! In monarchical England an Indian Viceroy is not more dangerous to public liberty during or after his time of office than a village schoolmaster. But in republican Rome it was early felt that

[1] Above, p. 132. [2] Vol. ii. p. 397.

the old equality of citizens could not subsist before pro-prætors and proconsuls.

Character of unpaid governors.

Under the influence of this feeling the senate and people were determined to adhere to the annual change of governors instead of prolonging their time of office by means of prorogation, by which alone an official might have become acquainted with and interested in his province. As at the same time the old practice was continued of giving no salary to the governors,[1] a regular system of extortion sprang up, which became the more injurious the faster the office of governor passed from one hand into another. Each in succession hastened to make the best use of the time at his disposal, and under numerous pretexts, in the shape of presents, contracts, or purchases, to find ample compensation for the expenses which his election had occasioned, and to procure the means necessary in the struggle for further honours. Nor was it matter of surprise that Roman citizens repaid themselves for the troublesome duty they had undertaken in the service of the state. Even the provincials, those, for instance, who had formerly lived under the dominion of Syracuse or Carthage, considered it quite natural that the government officials should be propitiated by presents and humble submission. With their former rulers the Roman lieutenants may at first have contrasted favourably, as they also did with their infamous successors in the time of Cicero.[2]

[1] The state provided only the necessary outfit for the governor and his suite (Liv. xlii. 1, 9), who was entitled to demand from the province in the way of requisitions what he wanted for his own house expenses (Plut. *Cato maior*, 6). This right of requisition was the pretext for extravagant demands and great extortion. When Cato was prætor in Sardinia, 198 B.C., he cut down these expenses (sumptus quos in cultum prætorum socii facere soliti erant circumcisi aut sublati: Liv. xxxii. 27, 4). Afterwards he made the attempt, which of course proved futile, of regulating them by a special law, which is referred to in the *Plebiscitum de Termensibus*: Nei quis magistratus prove magistratu legatus . . . . inperato quo quid magis iei dent præbeant ab ieisve auferatur nisi quod eos ex lege Porcia dare præbere oportet oportebit. Orelli, *Inscript. Lat.* 3673.

[2] Mommsen, *Röm. Gesch.* i. 816. The evil practice came to be established that if a Roman magistrate kept his extortion and his violent measures within

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Extortions of the tax-farmers.

A still greater pest for the provinces than the governors were the farmers of the public taxes, and the traders who infested all the subject countries for the sole purpose of making money. The governors being men of standing and entrusted with a public duty were, after all, possessed of a certain sense of honour and a feeling of responsibility which kept most of them somewhat within bounds; but the money-dealers had neither heart, shame, nor honour, and they abused without a twinge of conscience the semi-official position which they had bought for their money. The rude mode of raising taxes by employing farmers of the revenue, wherever it has been applied, has produced a class of unprincipled 'publicans and sinners' who have justly deserved the hatred and curses of the unhappy taxpayers. Nothing but a strict supervision exercised by independent state officials could have prevented the most shameful abuse in this manner of levying taxes. But the Roman magistrates were too closely connected by common interests with the class of knights to which the capitalists belonged to make enemies of them by controlling them too strictly. The case of the provinces became still worse when Caius Gracchus in his vain attempt to come to the aid of the oppressed subjects took from the senators the right of acting as judges, which they had abused, and gave it to that very class of capitalists whose position and interests tended to make them still more unfit for the responsible charge of rendering even justice.

Roman contractors and usurers.

The Roman traders, contractors, usurers, and adventurers, who followed the armies to the provinces as jackals follow in the track of the lion, had not, like the farmers of the taxes, a public commission, and thereby the authority of the state to back them. But as Romans alone they had great advantages over the provincials in matters of buying and selling; the Roman law and the tribunals of the

moderate bounds he was considered not to have exceeded his authority, and that accordingly the persons who felt themselves injured had to keep quiet.

prætor were a sharp weapon in their hands.[1] As the Roman nobility were forbidden to engage in trade, these merchants lent their names to enable noble senators like Brutus, the great republican and tyrannicide, to take with impunity interest at the rate of forty-eight per cent. We have seen above[2] what spirit reigned among these men in the good times of the Hannibalic war. If a Postumius and his equals could venture on the most outrageous knavery to rob the Roman treasury, we may guess how far honesty or moderation influenced the successors of Postumius in their dealings with the provincials.

Condition of the several provinces. —Spain.

The provinces conquered before the time of the Gracchi differed widely from one another. Africa and Macedonia had at that time belonged to the Roman empire for a comparatively short period. Their condition accordingly could not have been much affected by the peculiarity of the Roman administration at the time of which we treat at present. In a great part of Spain, especially in the west and north, war raged uninterruptedly, and even in the eastern and southern coast districts, where the Roman dominion might be regarded as firmly established, the condition of the country was far from being durably settled. The barbarous tribes of natives had for a long time to be governed rather by the sword than by civil law, and the Roman prætors or consuls commanding in those parts were too much occupied with the duties of war to have much leisure for other matters. Their chief task was the levying of the stipendium or war contribution, which was collected as a regular tax, and in exacting the supplies of corn necessary for their own wants or for military purposes. In the whole country there were as yet few large towns that could boast of wealth, civilisation, or refinement. Tarraco, New Carthage,

[1] As early as 198 B.C. Roman usurers had found their way into the comparatively poor province of Sardinia. Cato, who was prætor in that year, proceeded against them with reckless severity, and expelled them from the island. Liv. xxxii. 27, 3. Comp. Marquardt, *Röm. Alterth.* iii. 1, 291.

[2] Vol. ii. p. 319.

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and Gades were probably the only towns of any importance in Spain. The rest were, like Numantia, nothing but fortified villages. The wealth of the land was derived from agriculture and mining, and was small in comparison with the countries of older civilisation, such as Africa, Greece, and Asia. The inhabitants were stubborn, defiant, courageous, and poor. The Roman contractors, merchants, and usurers therefore found less profit in this province than the Roman officials, who could plunder without a pretext. The latter, as we see by the complaint of the year 171 B.C.,[1] had fully developed their peculiar system of government, which enabled them to leave the country after a short term of office laden with spoils and with the curses of the oppressed population.

Sardinia and Corsica.

Sardinia and Corsica were in a still more primitive condition than Spain. Their inhabitants for a long time offered the Romans a desperate resistance;[2] a peaceable administration of these islands was as yet out of the question. They paid tribute like Spain, or supplied grain for the army or for the capital, according to circumstances.[3] At the same time they furnished the Roman markets with great numbers of slaves of the worst and cheapest sort.[4] It is characteristic that Roman prætors did not shrink from hunting slaves with bloodhounds in the mountains of Sardinia.

Sicily.

Sicily was the only province which had for a longer period been under the administrative system applied by Rome to the conquered countries beyond the confines of

[1] Vol. iii. p. 378.

[2] Liv. xli. 6, 5; 12, 4; 17, 1; 21, 1; xlii. 1, 3; 7, 1. Comp. vol. iii. p. 425.

[3] It appears that the frequent importations of corn from Sardinia as well as from Spain are to be explained as exceptional requisitions for temporary purposes, and that the value of this corn was deducted from the regular annual tribute the provinces had to pay. These requisitions were good opportunities for the Roman governors of plundering the provincials, as it was in their power to fix the price as it suited them. Therefore the senate made a decree, which no doubt was of no effect, 'ne frumenti æstimationem magistratus Romanus haberet, neve cogeret vicesimas vendere Hispanos quanti ipse vellet. Liv. xliii. 2, 12.

[4] Aurel. Victor, 57. Festus, s. v. Sardi venales.

Italy. The greater part of the island had been ceded by Carthage in the peace of 241 B.C. Only the Syracusan kingdom of Hiero with the towns belonging to it and the republic of Messana remained as allies with such independence as they had a chance of retaining by the side of powerful Rome. After the year 227 B.C. a prætor was annually sent from the capital to Roman Sicily, and in his hands the military power and the civil administration were combined. King Hiero of Syracuse showed his wish to the last to keep on good terms with Rome by promptly offering his services in peace and in war. It has been related in the second volume[1] how, after his death, Syracuse was drawn into the vortex of internal party struggles and finally crushed in the collision of the two great rivals, Rome and Carthage. Since 210 B.C. the whole island had been a Roman province. Messana alone retained its former position as an allied state (*civitas fœderata*). Two other towns, Tauromenium and Netum,[2] obtained the same privileges. Five towns besides were declared free and exempt from taxes (*civitates liberæ et immunes*); these were Segesta, Halycæ, Alesa, Panormus, and Centuripæ.[3] The remaining communities were deprived of all special privileges and exemptions, though allowed local self-government. They had to pay not a tribute, like Spain and Sardinia, but the tenth part

[1] Vol. ii. pp. 280, 292.

[2] Cicero, *In Verr.* v. 22, 56. These towns had been subject to Syracuse. We may conjecture that they gained their privileged condition by early taking the part of the Romans after the rupture of the latter with Syracuse in the second Punic war. In a similar way the three Hernican towns of Ferentinum, Aletria, and Verulæ owed their immunities to the services they had rendered Rome in the revolt of their countrymen. Liv. ix. 42, 11; 43, 23. The principle on which the Romans acted is apparent from Liv. xxxviii. 39, 7: Civitatium cognitis causis decem legati aliam aliarum fecerunt conditionem: quæ stipendiariæ regi Antiocho fuerant et cum populo Romano senserant, iis immunitatem dederunt, &c.

[3] This exemption has reference only to ordinary and regular taxes. In time of war the allied towns were called upon, as a matter of course, to furnish auxiliaries. As the Romans avoided such a measure in Sicily as much as possible, they preferred asking for necessaries of war as a kind of extraordinary war-tax.

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of agricultural produce.[1] They were not more heavily taxed than they had been under Hiero or the Carthaginians, as the Romans had made the system of taxation which they found established in the country the basis of their institutions; but partly the manner in which these taxes were raised by the farmers of the revenue, partly the restrictions on free trade, reduced the old Sicilian population more and more to indigence.

Decay and ruin of Sicily.

For some time it appears the condition of the island was bearable. It was at any rate delivered from the internal feuds which had formerly afflicted it. Civil justice was administered in peace and order, not alone by the native magistrates of the different towns, but in matters of greater importance by the Roman prætors, who periodically held circuits for this purpose in the various districts. One would think that the Sicilians, who could now devote themselves almost uninterruptedly to the labours of peace, might, with the help of the inexhaustible resources of their fertile country, soon have recovered from the sufferings of war through which they had passed. But in truth the island became more and more desolate and torpid. The fresh and vigorous life of the stirring Greek towns slackened by degrees. The political storms which had raged so long were succeeded by the dull silence and uniformity of slavery, never varied except when a governor of unusual severity forced a cry of pain from the patient descendants of those men who had prided themselves on their liberty.

The glorious buildings destroyed by war never again rose from their ruins. Wild brambles sprang up among the mouldering works of art which Roman rapacity had left to the Syracusans, and the town which once had rivalled Athens in the glories of art and war was blasted by the breath of corruption, from which it never has risen down to our own days.

[1] Marquardt, *Röm. Alterth.* iii. 2, 151.

CHAPTER XI.

FOREIGN STATES ALLIED WITH ROME.

Independence of foreign states.

In the same manner as the town of Rome and the thirty-five tribes were surrounded by the Latin colonies, and beyond these by Italian allies and the subject provinces, the latter were again encircled by a number of states on a footing of more or less dependence upon, or friendship with, Rome, which could be regarded neither as parts of the empire nor as states entirely free. Their real independence lasted only so long as it rested upon a foundation of something like equality of power with Rome. As soon as a decided superiority on the part of the latter was perceptible, the nominal independence of a foreign state became in point of fact subordination, which was turned to account for the advantage of Rome. Actual independence like that which the smaller states of modern Europe enjoy through the counterbalancing influence and the interests of the great powers was impossible in antiquity.

Rome as a protecting power.

This state of things can be recognised even in the earlier period of Roman history. The Latins sank from the position of equal allies to that of subordinate states as soon as Rome obtained the preponderance in the league. The Samnites were free allies when the Romans wanted to put down with their help a revolt of the Latins. The result of the long wars with Rome was to reduce them more and more to dependence. The same was the case with the Greek towns in Italy and Sicily. Carthage at the time of her power and splendour treated with Rome on a footing of perfect equality, and concluded agreements for mutual advantage, of which we have seen an instance on

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the occasion of their common war against Pyrrhus.[1] After the Hannibalic war this was no longer possible. Nay, the principal cause of the Hannibalic war was this, that Rome already regarded Carthage as a subordinate ally, and that she consequently ventured upon the annexation of Sardinia and Corsica as well as upon the treaty with Saguntum, which lay within the recognised boundary of the Carthaginian dominion. After the battle of Zama Carthage was obliged to recognise Rome as protecting state, and Rome by her brutal abuse of this position in the disputes between Carthage and Masinissa drove the unfortunate Punic town to desperate and hopeless resistance.[2] The position of Syracuse after the war in Sicily was similar. Even the wise and sagacious Hiero, the tried friend of Rome, dreaded the capricious temper of his protectors, and sought to propitiate them like malignant deities by humble submission, by presents, and by services. If his successors had acted in the same spirit, the Syracusans would probably have continued to enjoy formal independence; but actual liberty and complete independence they could not have preserved any more than the faithful Mamertines of Messana, the oldest and staunchest friends the Romans had in Sicily. The revolution in Syracuse, following upon the death of Hieronymus, gave Rome the welcome opportunity of degrading her old allies, under the pretext of just punishment, to the condition of subjects.

Rome and her foreign allies.

After the fall of Carthage, the conquest of Macedonia, and the subjection of Greece, the Romans concluded treaties of friendship with some foreign states whose assistance had been of material advantage in gaining their great victories. Above all it was Numidia, Pergamum, and Rhodes that moved as satellites round the central Roman sun. Like the lesser beasts of prey that hunt with the lion, they were in continual danger of being torn to pieces themselves. We have seen how nearly Rhodes succumbed to this fate, and how she

[1] Vol. i. p. 526.

[2] Vol. iii. pp. 320 ff.

escaped only through the unexpected intercession of Cato.[1] Pergamum became a Roman possession with the stroke of a pen.[2] Numidia died hard, because there a barbarian possessed of ability and energy offered obstinate resistance to the corrupt nobility of Rome. But in one manner or another, after appearing for some time to live as independent states, all the allies of Rome shared the same fate. Accustomed by degrees to submit more and more, they gradually sank from the dignity of allies to the lower level of subjects and slaves.

Duties of the allies.

The position held by the independent states on friendly terms with Rome becomes perfectly clear in the history of the wars of that time. Hiero and Masinissa, the Carthaginians and the Rhodians, the Ætolians, Achæans, and all other peoples and princes who at some time or other had been on terms of alliance with Rome, were not held to perform certain specified and fixed services. The senate issued no orders to them as to the Italian allies and Latin colonies; nay, it sometimes even refused offers of assistance, or was satisfied with less than was offered. But, in spite of this apparent liberty, both parties knew that the services which were expected had to be rendered without delay or hesitation. Lukewarmness or ill-will in the conduct of the allies would on the first opportunity have been resented as treason. Nor was it only to the Roman state as such that the allies were obliged to render services voluntarily and with eager readiness. They had also to show themselves anxious to please individual Roman nobles, if they did not wish to expose themselves to the risk of making these men their enemies, and of encountering their opposition in matters of vital importance to themselves. Thus we hear that Lucius Scipio, the conqueror of Antiochus, induced the kings and towns of Asia to contribute money for the games which he celebrated in Rome, and which lasted for

[1] Vol. iii. p. 269.

[2] By the so-called testament of the last king Attalus, who bequeathed his kingdom to Rome.

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ten days.[1] This kind of self-taxation, to all appearance voluntary, but in point of fact compulsory, was nothing new in itself. It was the practice which had long been in use in Italy and the provinces, and was gradually applied to independent states whom Roman statesmen never could distinguish materially from subjects.[2]

Degrees of freedom left to the allies.

In other matters the allied states were free and independent. They preserved their laws and their own government without encroachment on the part of Roman officials or ambassadors. No permanent embassies were maintained. Ambassadors were despatched only on special occasions. But in every state a Roman party was formed, insisting with more or less determination on complete submission to Roman authority, and preparing the transition into the state of complete subjection, so that when internal circumstances were favourable the change could be effected without difficulty.

[1] Liv. xxxix. 22, 1: L. Scipio ludos eo tempore quos bello Antiochi vovisse sese dicebat, ex collata ad id pecunia ab regibus civitatibusque per dies decem fecit.

[2] When, in 179 B.C., Quintus Fulvius asked for permission to celebrate public games, for which purpose the people of Spain had contributed money, the senate granted the request, but decreed at the same time 'ne quid ad eos ludos accerseret, cogeret, acciperet, faceret adversus id senatus consultum, quod L. Æmilio Cn. Bæbio consulibus de ludis factum esset. Decreverat id senatus propter effusos sumptus qui graves non modo Italiæ ac sociis Latini nominis, sed etiam provinciis externis fuerant.' Liv. xl. 44, 10.

CHAPTER XII.

ECONOMICAL AND MORAL CONDITION.

CHAP. XII.

Relation of parts in an organized whole.

THE living organism of a state with all the forces that penetrate it in every direction cannot be taken to pieces and all its parts examined as if each were self-existing and independent. In every organism every part is closely connected with the whole, and is continually influenced by and influencing the action of the rest. If, nevertheless, scientific investigation advancing step by step examines every part separately, this process is not one chosen voluntarily. It is a necessary result of the imperfection and one-sidedness of the human faculties, which cannot be directed to more than one point at a time.

Extra-legal phases of national life.

In order to limit as much as possible the mistakes in the comprehension of the whole ensuing from this method of investigation, it would be necessary to pursue every thread of this complicated network through all its innumerable knots and twists, to examine the connexion of the various parts, the influences, the opposite forces and modifications exercised by each upon the rest. It would be necessary to calculate how in civil life external and internal policy, jurisdiction and finance, military affairs and police work for a common end, and only by their reciprocal influence constitute the organism of society. Nor have we to direct our attention alone to those aspects in the life of a people which are under the immediate control of the constituted public authorities. Those functions also of society which are, or seem to be, independent of the civil order of things, such as national industry, morals and religion, literature and art, play a part in the great system; they are advanced, interrupted, or developed by it,

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and receive from it their peculiar stamp. It is necessary, therefore, to examine also these departments of national life. In many of the subjects which thus come before our notice it is a matter of doubt whether they belong to the department of public law or to that which is left to the free agency of individuals—*i.e.* to functions of society of which the state takes no notice. They mostly present a double character. Having a share in both departments, their nature is influenced by the laws of the one, their form by the laws of the other. We encounter them in several directions and in various combinations, so that it is often difficult to say what their true character is. This cannot hinder us from distinguishing them as much as possible from similar phenomena and studying them singly, provided we remain conscious that this distinction is a subjective one, and that we keep in view the connexion of all of them with the life of the state and people.

Earliest conditions of Roman society.

Of the social condition of the Roman people in times preceding the dawn of contemporary history, we know no more than of the form of religion and law in prehistoric times. Blood-revenge and human sacrifices, the concomitants of all early phases of civilisation, were, it seems, already abolished before we can catch the first glimpse of settlements on the seven hills. Thus also community of land and property, the remnant of a half-civilised state, had disappeared.[1] We find the institution of private property in land fully recognised, and by the side of it we find public or common land. A law of debt of extreme severity secured the execution of all private contracts and personal obligations. This is perfectly certain. The sources

[1] The feeble remnants of it may be discovered in the economical arrangements of the Roman family, the members of which, even after they had grown up and had become liable to perform their civil duties to the state in peace and war, held all the family property in common during the lifetime of the head of the family. Also the hereditary rights of the members of the Roman *gentes* to the property left by any of their number point to the same community of property in the *gens* as their origin. These are the remnants left in the Roman state of that social condition, and of a time in which as yet no state properly speaking existed, but only the community of families in the narrow (natural) sense, as *familiæ*, or in the wide (artificial) sense as *gentes*.

of our information leave us in doubt only as to the extent to which plebeians as well as patricians could be owners of land in the full sense of the word. Niebuhr goes so far as to declare that the plebeians alone were entitled to freehold property to the exclusion of the patricians. But this view can hardly be maintained, and is now generally abandoned. It is now considered probable that the patricians enjoyed the unlimited right, whereas the plebeians had it only in a limited sense.[1] But these distinctions and inequalities had disappeared long before the time of which we are now speaking. Every Roman citizen, even those without rights of voting (*cives sine suffragio*) and freedmen, were entitled to possess land in full ownership in any part of the Roman territory (*ager Romanus*).

Occupation of conquered lands.

An institution peculiarly Roman was the custom of occupation—that is, taking possession of conquered land under the sanction of the state and in such a manner that the state reserved the right of property, and could at any time resume it to the prejudice of the actual occupier.[2] Originally the patricians, as constituting the genuine Roman people, claimed this right of occupation for themselves alone. Later on, at a period which we cannot fix, it was extended to the plebeians, and was the subject of one of the Licinian laws, which determined the maximum amount of land which an individual should be allowed to occupy.[3] The right of occupying public land, as it had first been a prerogative of the patricians, seems afterwards

[1] At the time when the patricians alone formed the *populus*, the plebeians were not citizens in the full sense of the word, but only *cives sine suffragio*. As such they were excluded from the *connubium*, and, as may be inferred, also from the *commercium*, which was necessary for the holding of full landed property everywhere in the *ager Romanus*. At a later period subject communities were restricted in their *commercium* to the limits of their own local boundaries. (Above, p. 186, f.) In a similar way it is probable that the plebeian members of each tribe at first could hold property only within the tribe to which they belonged, whilst the patricians were subject to no such restriction. We are exactly informed how and when the plebeians obtained the *connubium*. Unfortunately we know nothing of the time and manner in which they obtained the *commercium*. But it would be wrong to infer from this that they had always possessed it.

[2] Vol. i. p. 177.

[3] Vol. i. p. 326.

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to have been reserved to Roman citizens; but in course of time it was extended also to the Latin and Italian allies.[1] The whole question of this precarious tenure was destined in the time of the Gracchi to become the subject of the most violent disputes, which disturbed the internal peace of the republic and indirectly led to a revolution in the form of government.

Rental of land.

Besides the tenure of land in full property and the precarious tenure of occupation, the Romans were also well acquainted with the system of holding land by the payment of an annual rent. This manner of disposing of land was customary from the oldest times when the patricians were in the habit of letting to their clients patches of their own private land or occupied public land,[2] and it became more and more usual when private individuals and the state, having large tracts of land to dispose of, found it convenient to resort to the practice of letting. A large portion of fertile Campania which had been confiscated by the state in the Hannibalic war was let in this manner. In Sicily letting land was a universal custom.

Agriculture and commerce.

Agriculture was practised by the Romans from the earliest times. By the side of it, but only as a secondary pursuit, they gave their attention to grazing and rearing cattle. Their principal food was grain, vegetables, milk, and cheese. Animal food was exceptional, and probably eaten only at festivals which were connected with sacrifices. Sheep were bred in large numbers, particularly for their wool. Industry, commerce, and navigation were mostly in the hands of strangers. The Italians themselves had no natural liking or aptitude for these pursuits, which were the delight and glory of Greeks, Etruscans, and Carthaginians. Nor was this the case only in the earlier periods of their rude antiquity. The same habits prevailed when the city of Rome had become the centre of a power

[1] Appian, *Bell. Civ.* i. 10.

[2] Paul. Diac. p. 247, Müll.: Patres senatores ideo appellati sunt, quia agrorum partes attribuerant tenuioribus ac si liberis propriis.

that ruled the world. The peasant consuls Curius and Fabricius of the older time were looked upon as the ideals of true Romans, and even in Cato's time agriculture was considered the basis of the national wealth throughout Italy. The change which accompanied the extension of the Roman power affected not so much the object to which their attention was directed as the manner in which the old pursuits were carried on. The older time was that of small peasant proprietors, working independently for themselves with their own hands and with the assistance of their children. With the growth of the empire, with the influx of money and slaves, with the acquisition of rich dependencies, with the establishment of colonies, with the acquisition of numerous sources of revenue from the state domains and the provinces, with the estrangement of the peasants from field labour, caused by the long duration of military service, the old class of peasants diminished gradually, and their place was occupied by large landed proprietors with their farmers and slaves.

Influx of the peasantry into the towns.

The country in the immediate vicinity of Rome was of course the first to feel this change. Latium, so thickly peopled in earlier times, soon poured her degenerated peasants into the town to live there as paupers on the bounties of the state, whilst the small properties were bought up to form 'latifundia;' and this change was effected although the Roman law of inheritance did not acknowledge the right of primogeniture or an unequal division of property among the heirs to an estate. On the Sabine and Marsic hills in Samnium and Umbria the depopulation commenced later; but the whole of Italy felt by degrees the consequences of the great revolution which had made Rome the mistress of the world and the nobles the masters of Rome. It is evident from innumerable scattered indications that moderately well-to-do peasants became scarce in Italy, whilst the wealth of the whole world was accumulated in the hands of the ruling nobility and the money-dealers of the city. Various different causes tended to the same effect, and among these the chief were

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the restrictions in buying and selling land and in the choice of residence;[1] the enormous importation of grain from the provinces;[2] the long-extended military service of the Italians in foreign parts, and the frightful loss of life on all theatres of war, especially in Spain;[3] lastly, the increase of slave labour, which may be considered as the chief source of decay that sapped the life of ancient civilisation.

Multiplication of slaves.

In the olden times when the peasant with his sons and daughters cultivated his small holding himself, when a Cincinnatus guided the plough with his own hand, there was no room for numerous bands of slaves. The few slaves who were captured in war were kept more as serving-members of the families.[4] But after the first great conquest—that of Veii, in 396 B.C.—the mischievous practice of keeping numerous slaves gradually gained ground in Rome.

Slavery and capital.

The Samnite wars no doubt increased the number of slaves considerably, and the wars in Sicily, Africa, and Spain furnished more and more booty of this kind. Slaves were advantageous in agricultural and industrial pursuits, not only because they cost less than free workmen, but because they were exempt from military service, and could not, therefore, be withdrawn from their work. Thus buying slaves was always a good investment of capital, and the number of slaves increased in proportion to the accumulation of national wealth. The consequences are seen as early as 198 B.C. in a conspiracy of slaves in Latium,[5] and soon after, 196 B.C., in another conspiracy in Etruria.[6]

[1] Above, p. 186, f. [2] Above, p. 188. [3] Vol. iii. p. 374.

[4] The word *familia* was used to designate what we call family, and in a more confined sense the body of slaves kept by a *paterfamilias*. It was also used in a sense comprehending the two.

[5] Liv. xxxii. 26. The conspiracy of slaves alleged to have taken place in 419 B.C. can hardly be looked upon as historical. It was discovered, according to Livy (iv. 45, 1), in time; the guilty were punished, the informers rewarded. It is not likely that at a time of which the historical information is so very scanty we should find trustworthy evidence of a conspiracy which was only planned. But even granting this as possible, we know that the evidence of informers is worth very little. [6] Liv. xxxiii. 31, 1.

In the year 185 B.C. the shepherd slaves in Lucania collected by thousands, and rendered the country so unsafe that the prætor, Lucius Postumius, had to be sent there to restore order[1] by means of the greatest severity. About seven thousand were punished and many were executed. Others took to flight, and probably succeeded in continuing their depredations elsewhere.[2] Such rebellions of slaves are naturally reported only when they were of a peculiarly dangerous nature, but we may take for granted that a disease which at times assumed such formidable proportions was never quite extinct as long as the causes which had produced it continued to exist. The two great slave-wars in Sicily in 132 B.C. and 103 B.C., of which we shall speak by-and-by, show the full extent of the danger with which the economical and social condition of Italy was threatened by slavery.

Slaves from Greek lands.

From the countries inhabited by Greeks a more refined class of slaves were brought to the Roman market—skilled workmen, artists, scholars, physicians, teachers and men of letters. They filled the houses of the Roman nobles in the town, just as the slave labourers and herdsmen peopled the rural districts. The members of the Roman aristocracy, who now began to aim at refinement, and to decorate their houses with works of art, to read Greek poets, to talk and even write Greek, adopted in their houses a kind of fashionable state, in which Greek slaves and freedmen gave the necessary directions and help. The influence of this class of people on the habits of the Romans can hardly be overrated. This influence, combined, it is true, with other causes, gave a new impulse to the Roman mind. The national literature, which was still in its infancy, was abandoned as rude and barbarous, and that of Greece was set up as the only true model for imitation. Indeed, the ingenious Greeks employed in Rome might

[1] Liv. xxxix. 29, 8.

[2] In the following year the same disorders were repeated according to Liv. xxxix. 46, 6. But it is not unlikely that the events here narrated are only another version of those which Livy had placed in the year 185 B.C. Repetitions of this kind are of frequent occurrence.

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have fostered native literature as well as the useful and ornamental arts, had not the Roman soil proved too unfavourable for their growth.

Sources of Roman wealth.

Honest labour and the exchange of its produce are in our time almost the sole foundation and source of private wealth. In antiquity, this was not much the case, and nowhere less so than in Rome. Agriculture was the only occupation that, from the very beginning, was honoured by the true Roman. Even in the time of Cato, the wealth of Italy consisted mainly in the produce of the land. But it is hard to become very rich by agriculture. Even with the order, thrift, and parsimony so well understood and practised by the Romans, agriculture could do no more than supply a small proprietor with his bare subsistence, and a substantial landowner with moderate wealth. Manufacture and trade being despised as not becoming a Roman citizen, all men who sought after large profits turned their eyes to another quarter. It was war and the reward of victory that enriched the nobility in the first place, the speculators and usurers in the second.[1] From the state the soldier expected his pay and his share of booty[2] or land;[3] the citizen, cheap corn for himself; the speculator, an advantageous opportunity of investing his capital; the farmer of the taxes, a share in the revenues of the state domains; the provincial governor and his clients, a large fortune after one year's administration. All that was

[1] Polybius, xxxii. 11, 6, characterises this state of things in the following words: *συνέβη δὲ τὴν παροῦσαν αἵρεσιν οἷον ἐκλάμψαι κατὰ τοὺς νῦν λεγομένους καιροὺς* (after the war with Perseus) *πρῶτον μὲν διὰ τὸ καταλυθείσης τῆς ἐν Μακεδονίᾳ βασιλείας δοκεῖν ἀδήριτον αὐτοῖς ὑπάρχειν τὴν περὶ τῶν ὅλων ἐξουσίαν, ἔπειτα διὰ τὸ πολλὴν ἐπίφασιν γενέσθαι τῆς εὐδαιμονίας περί τε τοὺς κατ' ἰδίαν βίους καὶ περὶ τὰ κοινὰ τῶν ἐκ Μακεδονίας μετακομισθέντων εἰς τὴν Ῥώμην χορηγιῶν.*

[2] Livy, xlii. 32, 6, speaking of the year 171 B.C., says: Licinius veteres quoque scribebat milites centurionesque; et multi voluntate nomina dabant, quia locupletes videbant qui priore Macedonico bello aut adversus Antiochum in Asia stipendia fecerant.

[3] Liv. xxxi. 49, 5: Et de agris militum decretum ut quot quisque eorum annos in Hispania aut Africa militasset, in singulos annos bina iugera agri acciperet. The donations given on the occasion of a triumph to soldiers, centurions, and knights are frequently specified.

thus gain for one was pure loss for others, just as in gambling the loser has no compensation for what he has forfeited, and the winner cannot boast of having rendered the least service to the former. To property thus acquired clings the curse of sterility. It does not fertilise the ground upon which it falls. In the same manner as the common soldier thoughtlessly wasted his booty, the noble aristocrat squandered the treasures he had amassed in useless splendour, or in bribes necessary to secure the position once gained. The Roman peasant did not return to his paternal field to buy new ploughs or oxen with the money he had received, or to repair his cottage.[1] He was brutalised by the habit of violence practised with impunity on allies or enemies, and the land which was occasionally assigned to veterans soon slipped through their fingers into other hands. What use could it be under such circumstances if the censor reprimanded the owner of an estate for neglecting it? If the direct profits from a farm are not sufficiently remunerative to insure a rational and careful cultivation, moral encouragements are of no avail. It was in vain that philosophers preached about the respectability, worth, and purity of an agricultural life, compared with other occupations. The Italian peasant could not take heart from such reflections, whilst he gradually succumbed to the competition of slaves and of the provinces, to irrational restrictions of traffic, and to the pressure of the great estates of the nobles. He felt happier, after all, if he continued to serve as a soldier, or sought his fortune in the great capital as a client of some noble family, and as a political supporter of one of the contending parties.

Wealth of the highest Roman families.

Meanwhile enormous wealth was accumulated in the houses of the privileged families. It became customary for them to distribute oil and meal among the people, to exhibit gladiatorial combats at the solemn funerals of dis-

[1] The volunteers who in 190 B.C. took service under Lucius Scipio (Liv. xxxvii. 4) were veterans who had already received land for previous service. Liv. xxxi. 1; xxxii. 9.

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tinguished men, to give additional splendour to the public games at their own expense, to decorate their houses, the streets, and markets with statues of their ancestors, and to build palatial town-houses and country-mansions, filled with works of art carried off from conquered towns. The time was gone when a silver saltcellar was the only valuable article on a dining-table; when borrowed silver passed from one banquet to another in various houses; when it occurred to the censors to reprimand a senator for having in his possession more than ten pounds of silver.

Increase of luxury.

After the campaigns in the East, Greek and Oriental luxury gained ground rapidly in Rome,[1] especially, as Livy tells us,[2] through the army of that Manlius who had carried on a plundering warfare against the Galatians.[3] Now the houses were decorated with works of art and with splendid furniture of rich material and skilful workmanship. Meals were turned into festivals of luxury and sensuality, where the guests were entertained with harp-players and dancing girls, mimic actors, jugglers, and other ministers of social and sensual enjoyments. Now men of rank and fashion began to be distinguished as connoisseurs in the culinary art, and cooks, formerly the least respected servants of the household, rose in value. But, after all, as Livy remarks, these were but the slight germs of the luxury that was to come.

The women, who in the Hannibalic war had been compelled to simplicity in dress by the law of the tribune M. Oppius,[4] could hardly await the return of prosperity before they boldly required and obtained the removal of this irksome restriction, 195 B.C.[5] In vain the severe Cato endeavoured with eloquent zeal to preserve in time of peace the simplicity that had been practised in the good old time under the pressure of poverty. Neither his personal authority, nor the dignity of the consular office which he then held, could stem the current. It seemed like an intended insult to the champion of ancient customs

[1] Polyb. xxxii. 11. [2] Liv. xxxix. 6. [3] Vol. iii. p. 133.
[4] Vol. ii. p. 290. [5] Liv. xxxiv. 1.

that it was precisely his year of office that was chosen to give rein again to the extravagant propensities of the women. The picture drawn by Livy on this occasion of the female agitation for the repeal of the obnoxious law is by no means flattering, and represents the Roman matrons, whom we would fain believe to have been patterns of dignity, simplicity, and modesty, as beings not less frivolous and vain than other daughters of Eve.[1] We learn from the discussions on the repeal of the Oppian law that ornaments of precious metals and valuable materials, as well as private carriages, were not rare things in Rome, and we can draw the conclusion that great wealth had been accumulated in many families of the capital.[2]

Sumptuary laws.

The Oppian law was passed with the definite object of applying the entire wealth of the people to the defence of the country in a time of imminent danger. But it was an extraordinary interference with personal freedom, and could therefore be upheld no longer than extreme necessity required. Similar restrictions which interfered with the habits of private life and social intercourse were common in Rome at all times. The Romans firmly believed in the omnipotence of the state, and fancied that customs and habits, traffic and prices, could be regulated at pleasure by law. They clung to this subject in spite of the failures which had attended all their attempts. They were indefatigable in devising new rules for the purpose

[1] Liv. xxxiv. 1, 5: Matronæ nulla nec auctoritate nec verecundia nec imperio virorum contineri limine poterant; omnes vias urbis aditusque in forum obsidebant, viros descendentes ad forum orantes ut matronis pristinum ornatum reddi paterentur. Augebatur hæc frequentia mulierum in dies, nam etiam ex oppidis conciliabulisque convenerant, jam et consules prætoresque et alios magistratus adire et rogare audebant.

[2] Æmilia, the wife of P. Scipio, the conqueror of Hannibal, who was the sister of the conqueror of Perseus, was as distinguished among the Roman ladies by the display of her jewels and finery as her husband and brother were among the leaders of the nobility for their warlike exploits. When she took part in religious processions, she attracted the admiration and envy of all the ladies who were not rich enough to vie with her by her personal ornaments, her gorgeous carriage, her gold and silver vessels used in sacrifice, and by her suite of servants. Polyb. xxxii. 12.

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of preventing luxury and keeping society in proper paths. Thus, in the year 181 B.C. a law (the Lex Orchia) was designed to restrain extravagance in private banquets, and to limit the number of guests.[1] This law proved ineffectual, and as early as 161 B.C. a far stricter law was introduced by the consul, C. Fannius (the Lex Fannia), which prescribed how much might be spent on festive banquets and common family meals. It allowed one hundred asses on the occasion of the Roman and Plebeian games, the Saturnalia, and on one or two other occasions; thirty asses at other festivals; and only ten on all non-festive days.[2] The law, moreover, prohibited certain kinds of food and drink. By a law in the year 143 B.C. (the Lex Didia) this regulation was extended over the whole of Italy,[3] and not only the hosts but also the guests who violated it were threatened with punishment.

Inefficiency of the luxury laws.

These useless luxury laws met with the hearty approval of Marcus Porcius Cato, who fondly believed that by such police regulations he could arrest the decay of morals and restore as by magic, in a period of overflowing wealth, the simple mode of life of olden times. It is not surprising that they placed no fetters on the spirit and habits of the age. They could but have a demoralising and irritating effect, by compelling rich people to think of means for evading punishment. All kinds of luxury, far from abating, gained the upper hand more and more. The arbitrary measures which Cato, in his censorship (184 B.C.), adopted for restoring patriarchal simplicity, were of still less avail than the penal laws, for these measures, bearing the stamp of personal caprice, could but excite opposition. Cato, acting by virtue of his censorial authority, went so far as to rate the estimated value of certain slaves, employed more for show than for real service, at a figure ten times higher than their actual value,

[1] Macrob. *Saturn.* ii. 13.

[2] Macrob. *ib.* Gell. ii. 24, 2–6. Plut. *Hist. Nat.* x. 50. Athen. vi. 108.

[3] Macrob. *ib.* This law is an example showing the dependence of the Italian allies on laws passed in Rome. Above, p. 189.

and thus to subject the owners to an excessive tax, which was in point of fact a fine.[1] These high-handed proceedings in which Cato, by an abuse of his magisterial powers, indulged in the spleen of excessive virtue, were in reality nothing but an impotent protest on the part of an honest but narrow-minded moralist. They were of as little effect as the verses of poets who rail against the noxious influence of money. If the influx of wealth could not be prevented, wise men ought to have exerted themselves to improve the taste and the habits of their fellow-citizens, and to raise them to a higher standard of enjoyment. But Cato and men of his stamp thought that Roman virtue was endangered if the honest citizen no longer enjoyed his porridge and beans as formerly, and if vessels of precious metal and artistic form took the place of the old wooden bowls and drinking-horns. They had in a very high degree the common human weakness of overrating the merit of what is old, and of regarding the failings of the age as new and as occasioned by the change of circumstances. They were mistaken in both respects. As far as we can judge of the old times, we find in them the same vices, only in a ruder form and less obtrusive and offensive, because they ranged as yet within narrower bounds. But avarice, cupidity, and cruelty were no less hideous, when, instead of gold or silver, heavy copper was the magnet that attracted the hearts of men. The ambition of the rude peasants of the time of Cincinnatus was surely not a whit more noble than that of the Scipios, and their vanity was not smaller because they could erect no gilt statues in their houses. We may believe, therefore, in spite of all high-sounding declamations to the contrary, that the foundation of morality on which the family and social life of the Romans was based in the third and second century before our era, was essentially the same that it was at an earlier period, and that the signs of a low moral standard

[1] Liv. xxxix. 44, 2. Plut. *Cato maior*, 18. The effect of this arbitrary measure was that the owners of such slaves were subject to pay as property tax thirty times as much as that for which they were legally liable.

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which we meet with are to be explained first by the circumstance that we are better informed concerning this time, and secondly by the fact that by the growth of power and wealth the sphere for practising virtues and vices had become far larger, and that what actually took place was consequently more striking.

Influence of Greece on the Romans.

On this occasion we must also examine the truth of the assertion universally made, that Roman morality was severely injured by contact with strangers, especially with Greeks. Hearing these complaints, we might fancy that the Romans had up to this time lived in the state which sentimental poets ascribe to the golden age. It was once the custom to extol the innocent life of savages as that of simple-minded, uncorrupted, and purer races. That was the time when the real condition of tribes untouched by civilisation was less known than it is at present. But the more we become acquainted with the customs of the kingdom of Dahomey and other tribes who are innocent of what is called the varnish of European politeness, the less do we find in them to admire. And not only the savage but the half-savage, the rude uncivilised or half-civilised man, all the stages leading up from the most primitive condition to our own, are infected more or less by the same vices, which surely do not slumber in the human breast until called forth by the fostering influence of wealth and art, but are developed everywhere alike with or without civilisation. The Spartans and Ætolians were the poorest, simplest, and most ignorant, but not the most virtuous of all Greeks. At any rate, we should not find it difficult to make our choice between Sparta and Athens, even if moral considerations alone were to turn the scale. Thus we believe that the Romans in their first intercourse with the Greeks can and must have learnt much that was new to them of good and evil; but that the core and substance of Roman morality remained very much what it had been before.

Forms of marriage.

It is, above all, the earnestness, the firm order and virtue of family life upon which the morality of society

depends. Bearing this in mind, we shall not be able to speak of great depravity in the present period of Roman history, for the Roman family in the second century B.C. was still distinguished by the same order and purity as before. It is true that both the forms of concluding marriages and the legal rights of husband and wife had changed. The religious ceremony of *confarreatio*, which had been customary in all patrician families, was regularly practised now only in the families of patrician priests. By the side of it the *coemptio*, the marriage concluded in the form of a purchase, had become common, and also a third form, the *usus*, which dispensed with all formality. Thus what may be called by way of comparison the form of civil marriage had taken the place of religious marriage.[1] But it is a mistake to suppose that the simplification of the forms of marriage lessened the importance and sanctity of the matrimonial bond.

Position of married women in marriage without *manus*.

Such a deterioration might be inferred rather from a change in the legal relations of husband and wife. Whilst formerly the power of the husband had always been unlimited, and the wife was subject to the *manus, i.e.* the dominion of the husband, as the child was subject to the power of the father, law and custom now made it possible to conclude a marriage without *manus*, in which the wife retained her right of disposing freely of the property that belonged to her. Marriages without *manus* became gradually general in the time after the Punic wars. But even this addition to personal liberty cannot be considered as a loosening of the old bonds of family order. It did not interfere with the moral relations of married people, and in nowise restricted their duties towards one another, or their privileges so far as they concerned family life. It was with regard to marriage the same phenomenon that is everywhere perceptible in the progress from the old restraint customary in family and tribe to greater individual liberty

[1] It is, however, not to be supposed that when the *confarreatio* had become obsolete all religious ceremonies were abolished. On the contrary, a number of formalities, sacrifices, and auspices continued to be practised.

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in the state. The authority which the husband and father lost was acquired by the state, and the state having thus been strengthened in its authority was able to extend greater personal liberty to each individual.

The Voconian law.

It is evident from the Voconian law,[1] passed about this time (in the year 169 B.C.) under the auspices of M. Porcius Cato, that the austere admirers of the old time regarded with jealousy the increasing independence of women. The object of this law was to limit the social influence of women by forbidding rich citizens to make them heiresses of more than one half of their whole estate. A great dowry of a woman was looked upon as a great danger to the old discipline and order in house and state, and it was hoped that by artificial means the submission of the wife to her husband would be secured.[2] Of course this law was as unavailing as all others which resulted from a misunderstanding of social or psychological conditions. Ways and means were soon found to evade the restrictions of the Lex Voconia. Whoever wished to leave his property to a daughter rather than to some distant relation, had but to make it over in trust to a third person, for the benefit of the heiress he had in view. This became the regular practice, and the number of rich ladies accordingly was not affected by the law, nor the abuse which they might possibly make of their wealth restrained.

On the whole the sanctity and dignity of married life were as yet unimpaired in Rome in the period under discussion. Polygamy had never been admitted either by

[1] Liv. epit. 61: Q. Voconius Saxa tribunus plebis legem tulit, ne quis mulierem heredem institueret. Cicero, *In Verr.* ii. 1, 42, 107. Gaius, *Instit.* ii. 274: Item mulier, quæ ab eo, qui centum millia æris census est, per legem Voconiam heres institui non potest, tamen fideicommisso relictam sibi hereditatem capere potest. The law affected only testators of the highest census. Comp. Lange, *Röm. Alterth.* ii. 280.

[2] That marriage with a rich wife is not always an unmixed blessing was experienced by Roman husbands often enough, and is frequently the topic of satirists. Well known is Juvenal's exclamation (vi. 460), 'Intolerabilius nihil est quam femina dives,' and the Horatian (*Od.* III. xxiv. 19), 'Nec dotata regit virum coniux;' but much earlier, in the time of the ancient republic, the comic writers complain of the same evil. Comp. Plautus, *Aulul.* II. i. 45, and III. v.

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Greek and Roman women.

law or custom. The mother of the family shared with the father the office of a domestic priesthood and the general government of the house. We do not find that women in Rome sank, as unfortunately they did in Athens, to a level where they had no longer any spiritual or moral but merely material and economical relations with their husbands. The Roman matron was not secluded in rooms set apart for the use of women alone. She shared the seat of honour with her husband in the atrium; she was not obliged to hide herself timidly from public view, but could show her face in the streets and market without being considered wanting in modesty, decorum, or chastity.[1]

Antiquity of the right of divorce.

We have no reason to believe that conjugal love and fidelity, the mutual affection of the members of one family and the dignity and purity of domestic life, were materially altered for the worse before the period of the demoralising civil wars. It was a current opinion in Rome after these wars had produced their effect, that divorce was altogether unknown for five hundred years. Confident statements were made to the effect that the first divorce occurred in Rome between the first and the second Punic war,[2] when Spurius Carvilius Ruga, a distinguished member of the nobility, put away his wife because she was barren, though he loved her tenderly. This statement is as erroneous as the inferences which have been drawn from it. The Roman marriage never was indissoluble from the first. Even the most solemn contract of marriage by 'confarreatio' could be set aside by an equally solemn 'diffarreatio.' Laws of divorce are referred even to the time of Romulus, which means that they were supposed to be as old as the state itself.[3] There are traces of the forms of divorce in the laws of the twelve tables.[4] But even without these proofs

[1] According to Valerius Maximus, vi. 3, 10, C. Sulpicius Gallus, who was consul 243 B.C., divorced his wife, because she had shown herself in public 'capite aperto.' But the severity of Gallus was reproved as excessive, and as a 'horridum supercilium.'

[2] Dionys. ii. 25. Gellius, iv. 3; xvii. 21, 44. Valer. Max. ii. 1, 4.

[3] Plutarch, *Romul.* 22. [4] Cicero, *Phil.* ii. 28.

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it would follow from the nature of the husband's power (*manus*) over his wife, that he could under certain circumstances put her away. Yet public opinion restrained a capricious use of this right and demanded the observance of certain formalities. One of these was the calling of a family council, where the husband would explain his reasons, and might be influenced by the voice of his wife's relatives. If anybody neglected these forms, he exposed himself to public reprobation, though legally his proceeding could not be challenged. Thus, in 307 B.C., about seventy years before the alleged first divorce known in Rome, L. Antonius incurred the displeasure of the censors and was expelled from the senate, because he neglected to consult a family council before he sent away his wife.[1] His right could not be called in question, and was not contested in a court of justice; but the mode in which he exercised it was reproved by the censors in their capacity as guardians of public morality.

Connexion of divorce with the *patria potestas.*

The single case of L. Antonius is sufficient to prove that the statement about Sp. Carvilius is false. But it must not be supposed that no cases of divorce occurred before even the time of L. Antonius. It would be unreasonable to suppose that a Roman husband, who possessed unbounded authority over his children, who could sell them as slaves or punish them with death, was bound to a wife for ever without the legal means of dissolving the union. Numerous instances of such dissolutions of marriage must have taken place. But they would not be mentioned in the public annals unless a prominent man was concerned, or some peculiar feature of law or custom was involved.

State of feeling with regard to divorce.

So much may be allowed to be true in the general impression of the writers of the later annals, that cases of divorce were less frequent in the early period of the republic than after the Gracchi. But that in itself the dissolution of a marriage argued moral depravity, or was looked upon as such, would be a grave error. If a man so eminent in the state and so venerable for his personal character as L.

[1] Valer. Max. ii. 9, 2.

Æmilius Paullus, the conqueror of Perseus, could divorce his wife—who was the mother of L. Scipio Æmilianus, the destroyer of Carthage and Numantia—we may wonder that such a family disruption was brought about, but we have no right to infer that any one of the persons concerned was guilty of an unworthy or dishonourable act. No family could be more decorous and pure than that of Æmilius Paullus. He was the very pattern of a noble Roman, and his son, who passed by adoption into the equally distinguished house of the Scipios, venerated his divorced mother as long as she lived.

Morality of Roman women.

We are still less entitled to infer moral decay from the stories of prosecutions of matrons for the alleged poisoning of their husbands. The oldest accusation of this kind is related of the good old time of the Samnite wars, and has been rejected in a previous volume as unhistorical.[1] We may reasonably entertain the same doubts with regard to a lady of the first nobility, the wife of a consul, and mother of a consul, who was prosecuted for poisoning in the year 180 B.C.[2] At that time Rome and the whole of Italy were visited by a malignant epidemic which lasted for three years, and carried off such numbers of people that it became difficult to find recruits for the army. At Rome, L. Calpurnius Piso, one of the two consuls, a prætor, the supreme pontifex, another pontifex, an augur, and many more eminent men of all ranks were carried off. In the universal terror which had seized the people the Sibylline books were consulted, days of prayer were set apart, and extraordinary sacrifices and gifts were offered to Apollo, Æsculapius, and Salus. But this was not sufficient to calm the public mind. In looking about for the causes of this great calamity, people hit upon the foolish idea that

[1] Vol. i. p. 567.

[2] Liv. xl. 37, 5: Necatus consul a Quarta Hostilia uxore dicebatur. Ut quidem filius eius Q. Fulvius Flaccus in locum vitrici consul est declaratus, aliquanto magis infamis mors Pisonis cœpit esse; et testes existebant qui post declaratos consules Albinum et Pisonem, quibus comitiis Flaccus tulerat repulsam, et exprobratum ei a matre dicerent, quod iam ei tertium negatus consulatus petenti esset et adiecisse, pararet se ad petendum, intra duos menses effecturam, ut consul fieret. Inter multa alia testimonia ad causam pertinentia hæc quoque vox nimis eventu comprobata valuit cur Hostilia damnaretur.

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the plague had been artificially produced by poisoners. A vague apprehension of poison at all times filled the minds of the Romans, and brought about at a later period the establishment of special tribunals for the trial of poisoners (*quæstio perpetua de veneficiis*), which may be looked upon as forerunners of the trials of witches in modern times. As early as the year 184 B.C.,[1] prosecutions of poisoners had been set on foot, and Quintus Nævius, the prætor charged with the duty of conducting these prosecutions, according to the report of Valerius Antias, condemned nearly two thousand persons. The plague had probably been an epidemic for some years; no wonder that in the year 180 B.C. the belief once more became established that it had been produced by poison. But it must cause great astonishment that suspicion fell upon one of the noblest women of the aristocracy. Hostilia, the wife of the consul Piso, was the widow of Cneius Fulvius and mother of Quintus Fulvius Flaccus. This Flaccus had ten years previously held the prætorship, and had twice endeavoured in vain to obtain the consulship. For a third time he became a candidate in the year 180 B.C., together with his stepfather, Piso. He again failed, and Piso was elected, but died soon after, whereupon Flaccus was elected to the vacant place. These circumstances, though perfectly natural and comprehensible, sufficed to cast on his mother Hostilia the suspicion of having poisoned the consul, her husband, in order to obtain the consulship for her son. A Roman matron was thought capable not only of this most atrocious crime, but of the madness of committing it merely to transfer the consular honours which her family enjoyed already from her husband to her son, who had previously held the

[1] Liv. xxxix. 41, 5. As if these trials had been a trifling and secondary affair, Quintus Nævius finished them off in four months before his departure for his province, Sardinia. One might have fancied that trials in which the number of persons accused was counted by thousands ought to have called for the appointment of a special and extraordinary commissioner. But as the information is derived from the notorious liar Valerius Antias, the number 2,000 may be one of his favourite exaggerations.

second post in the state, and was sure of soon obtaining the first, unless his prospects were jeopardised by a crime such as that of which his mother was charged, and of which he would have been held an accomplice. The charge is in itself so absurd that we should be inclined to think it was never seriously preferred, if it were not to a certain extent characteristic of the credulity and malignant scandalmongering in which the Roman people at all times delighted. It has a striking parallel in the calumnies of which Livia, the wife of Augustus, was the object, and which even such an historian as Tacitus did not disdain to report in his disingenuous and insidious way without accepting or rejecting them emphatically.[1] In one respect the crime attributed to Hostilia was even more unreasonable than that of which Livia was accused. The latter could almost be sure that after the natural death of Augustus, her son Tiberius would inherit his power; but Hostilia could neither determine nor foresee the result of a popular election, upon which, after all, her son's prospects depended.

Difficulties in the story respecting Hostilia.

It is not quite clear from Livy's report whether Hostilia was actually prosecuted and condemned for the murder of her husband.[2] Possibly accusation and condemnation were only talked of. If she had really been found guilty, her son—the consul Flaccus—would assuredly have been suspected as implicated in her guilt, and would have been obliged to clear himself from this suspicion. However that may be, it is impossible for us to regard the wife of the consul as a murderess; and we can consequently draw no inference from a crime so incredible concerning the moral state of the age.[3] It is not even

[1] Tacit. *Annal.* i. 5: Et quidam scelus uxoris suspectabant.

[2] See the passage of Livy, xl. 37, on p. 231, n. 2. Livy uses vague expressions ('necatus consul dicebatur'—'mors Pisonis magis infamis cœpit esse'), but not one from which it can be inferred that an actual accusation was made and a trial took place. Even the last words ('hæc vox valuit cur Hostilia damnaretur') seem purposely chosen to leave it uncertain whether Hostilia was condemned. Not a word is added of the implication of Q. Flaccus in the alleged guilt of his mother, or of a charge raised against him.

[3] The general opinion at present seems to be to accept the charge against Hostilia as proved.

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probable that in the time of Cato a serious suspicion could rest upon Hostilia, and we believe that the vague and scandalous story related by Livy is a mere invention of some family annalist who owed the Fulvian house a grudge, and concocted out of the ordinary town-gossip the story of a capital charge and a great public trial.

Alleged frequency of poisoning.

In the year 179 B.C. the prætor Mucius Scævola was commissioned to make an investigation into poisonings alleged to have taken place in and near the town.[1] We are not informed to what result his investigations led. It was before his tribunal that Hostilia should have been tried. If she was thus tried and condemned, we should no doubt have heard of the condemnation of many more victims. But it may not have been so easy to proceed summarily against Roman citizens and to condemn them on vague rumours or false evidence. We hear of no convictions in Rome; but the prætor, Q. Mænius, who had been appointed in the previous year to conduct similar investigations in various parts of Italy[2] before he proceeded to Sardinia,[3] was in a position to report to Rome that he had condemned three thousand persons, and that the investigations were assuming larger proportions, in consequence of new evidence pouring in as fast as he went on. He added that he must either give up his investigations in Italy, or the hope of proceeding to his province of Sardinia. This sad testimony of the wretchedness of Roman criminal jurisdiction is indirectly a proof that public morality could not have sunk so low as we should be obliged to infer from the condemnation of so many

[1] Liv. xl. 44, 6: P. Mucius Scævola urbanam sortitus provinciam est, et ut idem quæreret de veneficiis in urbe et propius urbem decem millia passuum.

[2] Liv. xl. 43, 2.

[3] It is curious that both in 184 B.C. and 180 B.C. a prætor destined for Sardinia was detained in Italy with investigations into wholesale poisonings. In the first case it was Q. Nævius (Liv. xxxix. 41, 5); in the second, C. Mænius (Liv. xl. 37, 4; 43, 2). The former condemned about 2,000 persons, the latter 3,000. The two stories are so like each other that one is tempted to conjecture that they are two versions of the same original.

thousands for one single class of crimes in so short a space of time.

The Roman family.

In order to obtain an insight into the interior of Roman households, and to comprehend the real character of family life, we should require more minute and accurate information than the ordinary sources of political history supply; we should want details which concern, not the course of great political events, but the doings and transactions of everyday life. Such details would perhaps be furnished by writers of the drama, especially of a truly national comedy. The Roman comedy, however, of which specimens have been preserved, is an imitation of Greek models; and though a considerable proportion of national material was necessarily mixed up by the writers with their foreign originals, these plays do not reflect in its purity the spirit that animated the Roman family. The fathers, mothers, and sons, the freedmen and slaves who are the *dramatis personæ* in the plays of Plautus and Terence, are not altogether true Romans. If a few of the class of Atellan plays had been preserved, or some specimens of the *comœdia togata*, we should probably be able to judge far more correctly of the spirit of private and family life in Rome than we are at present. It was in all probability more earnest and pure than we generally suppose, but, compared with the families of modern times, less affectionate and tender. Even Cato agreed with the general view of the Greeks in considering marriage to be an inevitable evil, and in despising women with all his heart. No wonder that by most people marriage was regarded chiefly from a political and economical point of view. A wife was chosen for the young Roman by his father; the betrothal was a bargain. The first object of marriage was the birth of children and the propagation of the family for the good of the community and for the maintenance of the family sanctuaries. The second object was the preservation and increase of material wealth. Whatever lay beyond this, such as true, warm-hearted

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affection;[1] sympathy in spiritual aspirations shared by man and wife; the cultivation of noble sentiments and ideas by mutual influence; high aims pursued in common; interchange of thoughts on matters divine and human—all of this could not take root in the cold and heavy soil of Roman family life.

Corrupting effects of slavery.

The existence of slavery alone sufficed to prevent the maintenance of conjugal fidelity. How could even the most dignified of Roman matrons preserve her place in her husband's heart and in the esteem of her children, if female slaves and freedwomen, liberal of their charms, succeeded in fascinating the men? If such a champion of virtue as Cato could vex his grown-up son by his intercourse with a slave girl;[2] if the wife of Scipio Africanus[3] thought it advisable, or was obliged to think it advisable, discreetly to overlook the amours of her husband, what must have been the moral atmosphere in those families which neither philosophy nor public spirit directed to higher aims? The experience of all peoples and all times in which slavery has existed proves that it destroys the purity and dignity of family life. And thus this canker of the ancient world, which by dishonouring labour checked the healthy growth of industry, appears also with regard to the moral condition of the nation as the germ of decay.

Unnatural vices.

And yet the most repulsive extravagance of sensuality was neither originally Roman nor was it approved of by the Roman feeling for what was dignified and honourable. Although the shameful practice of pæderasty had come over to Italy with other Greek[4] sins, and could easily gain ground here, on account of the existence of slavery, it was nevertheless always considered unworthy of a Roman. To compel, or only to per-

[1] Seneca, *Fragm.* 84: Origo quidem amoris honesta est, sed magnitudo deformis; nihil autem interest quam ex honesta causa quis insaniat. In aliena uxore omnis amor turpis est, in sua nimius. *Ib.* 85: Sapiens vir iudicio debet amare coniugem, non affectu. Nihil est fœdius quam uxorem amare quasi adulteram.

[2] Plutarch, *Cato maior*, 24.

[3] Valer. Max. vi. 7, 1.

[4] Polyb. xxxii. 11, 4.

suade, a Roman citizen to an act of unnatural lust[1] was always regarded as a crime deserving of death;[2] to consent to it was in a freeborn youth equally punishable.[3] But the law did not protect slaves from abuse and violence of their masters, however much public opinion might condemn the dissolute wretches who gave themselves up to this foreign vice.

Public morality.

On the other hand, intercourse with prostitutes, if not exceeding moderate bounds, was permitted by common practice, and not censured even by moralists.[4] An anecdote which is related of the censor Cato is characteristic of this license.[5] Meeting one day a respectable young man coming from a brothel, he commended him.[6] But finding him repeatedly on the same road he turned his praise into reproach, because he could not approve of his young friend's living in the brothel. How little the reputation of a man was injured by habitual intercourse with prostitutes we can gather, not only from many features of the comic stage,[7] but also from the reports which Livy gives of the Bacchanalia.[8] Even married men, so long as they did not offend against outward decency, could with impunity indulge in excesses which would have brought upon the wife the severest penalty.[9] The practice of concubinage was formally allowed, and a concubine (*pellex*) was not considered an outcast of society, although

[1] 'Monstrosa Venus et nefanda libido.'

[2] Valer. Max. vi. 1, 7, 9, 10, 11, 12.

[3] Valer. Max. vi. 1, 5.

[4] Valer. Max. vii. 3, 10: Vulgari et permissa venere uti. Cicero, *Pro Cælio*, 12, 28: Datur concessu omnium huic aliquis ludus ætati et ipsa natura profundit adolescentiæ cupiditates: quæ si ita erumpunt, ut nullius vitam labefactent, nullius domum evertant, faciles et tolerabiles haberi solent. *Ibid.* § 30, 42, 44, 48.

[5] Horat. *Sat.* I. ii. 31, and Scholia *ad l.*

[6] The motive for this praise is explained in the passage quoted from Cicero above, note 4.

[7] Terent. *Andr.* I. i. 124. Plaut. *Bacchid.* III. iii.; *Pseudol.* I. v.

[8] Below, p. 272 ff.

[9] Plautus, *Mercat.* 805:

Ecastor lege dura vivont mulieres
Multoque iniquiore miseræ quam viri.
Nam vir si scortum duxit clam uxorem suam,

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she was excluded from the honours of the matron and from the temple of Juno.[1]

Law of adultery.

The inequality of legal principles applied to man and wife with regard to conjugal fidelity, which has not been altogether abolished, even in our own time, by modern custom and legislation, was in Rome considered natural and reasonable. The husband by an act of adultery was not guilty of an offence against his own wife. His intercourse with the wife of another made him, indeed, guilty of adultery, but he was guilty only with regard to the husband of this woman, whom alone he was supposed to have injured.

The Roman matron.

From a Roman matron, on the other hand, chastity was required as the first condition of her social and domestic *status*. She could approach the altar of her house only as a pure priestess. As a wife she was expected to be no less virtuous than a Vestal was as a virgin. Her infidelity would have endangered the purity and legitimacy of the family, and would have been a crime against the protecting deities of the house. Hence the husband was authorised to punish conjugal infidelity of his wife, even by death, if he succeeded in surprising her in the act. It was a crime punishable especially by the domestic tribunal of the male relatives, which was convoked on such occasions by the head of the family. Yet it was prosecuted also by the public authorities at a comparatively early time. As early as the year 295 B.C.—*i.e.* in the heroic age of the Samnite wars—Livy[2] remarks that

> Id si rescivit uxor, impune est viro.
> Uxor virum si clam domo egressast foras,
> Viro fit causa, exigitur matrumonio.

The words of Cato quoted by Gellius, x. 23: In adulterio uxorem tuam si prehendisses, sine iudicio impune necares; illa te, si adulterares sive tu adulterarere, digito non auderet contingere, neque ius est.

[1] It was a reputed law of Numa, 'Pellex aram Junonis ne tangito.' Gell. iv. 3, 3. Paull. Diac. s. v. '*Pellices*.'

[2] Liv. x. 31, 9: Eo anno Q. Fabius Gurges aliquot matronas ad populum stupri damnatas pecunia multavit, ex quo multatitio ære Veneris ædem quæ prope Circum est faciendam curavit. This is indeed a strange story. If the fact is correctly stated by Livy, we cannot imagine that immorality on such a stupendous scale was confined to one year, or, in fact, to one period. It

several matrons were accused of adultery and condemned by a popular tribunal. If this report may be believed, we cannot talk of a further corruption of morals in the time of the Scipios; at least, we have no proofs of an increase of conjugal infidelity during this time. It was not till later, in the time of the civil wars, that matters changed. Then, but not until then, the immorality of women assumed alarming proportions, and finally called forth, under Augustus, the vigorous intervention of the law.

Wives and daughters.

A Roman paterfamilias watched with equal vigilance and equal severity over the chastity of his daughter as over that of his wife. The deed of Virginius, who killed his daughter to save her from pollution, though it be only a fiction, is characteristic of the prevailing feeling of Roman fathers. A certain P. Mænius[1] slew a freedman of whom he had been extremely fond, merely because he had ventured to kiss his daughter. A Roman knight, Pontius Aufidianus, whose daughter had been dishonoured by a slave, punished both the daughter and her seducer with death.[2] The same was done by a certain Atilius, although he himself had made a profession of unchastity.[3] Every Roman virgin, it was thought, should vie with the Vestals in purity of conduct.

Slaves and freemen.

We have already repeatedly pointed out the injurious influence of slavery on the Roman state and people. Wherever we turn we find its pernicious traces. Law, social economy, customs, all branches of public and private

must have been an evil of long growth before it could reach such dimensions. For moral disease, unlike a physical epidemic, is not capricious and unaccountable in its devastations. It can neither come nor go suddenly. We should, therefore, be justified in assuming on the strength of Livy's report, that the old Roman purity of manners, so generally and so highly extolled, is altogether fictitious, or that the outbreak of vice in 259 B.C. was no more real than the poisoning of 331 B.C. (above, p. 231) and of 180 B.C. We are decidedly in favour of the latter alternative, and we see in the proceedings against the matrons in 259 B.C. one of the instances of periodical panic to which the Romans were subject, and which made them unjust and cruel to an extent rarely equalled by other nations.

[1] Valer. Max. vi. 1, 4. [2] Valer. Max. vi. 1, 3. [3] Valer. Max. vi. 1, 6.

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life were afflicted by the inflammation and sores produced by this ubiquitous poison. The Romans were severely punished for refusing to recognise human nature and their native, human rights in human beings. The injustice which they accustomed themselves to practise towards slaves necessarily hardened their hearts towards freemen, who after all were distinguished from slaves, not by nature, but by an artificial barrier alone.

Condition of the slaves.

Hardheartedness to the weak, to subjects and enemies, is the most outrageous mockery of that humanity which we usually consider as the ornament both of ancient and modern life. It is precisely in men who, like Cato, appear as patterns of Roman virtue that this coarseness of moral feeling is most distinctly marked and shaped into sententious rules of life. 'So many slaves,' says Cato, 'so many enemies in the house.' In order to maintain the master's authority amid such dangers, he recommends the encouragement of disputes and quarrels among slaves, and as much as possible the separation of those among them who as countrymen might be inclined to sympathise with one another and possibly to conspire. Cato advises the Roman slave-owner to sell old slaves, that he may not be obliged to support them when they have become decrepit and useless. It is evident from every page of ancient history, in comic writers, historians, and philosophers, that slaves, as might be expected of them, did not fail to return such want of feeling with dishonesty, treachery, and hatred; that they instructed and abetted the children and women in immorality, and were their accomplices in all intrigues or conspiracies; that they aided their masters in the indulgence of their worst vices, and were ever ready to lend their hand in any act of infamy. Excluded as they were from honourable employment; living like domestic animals, without rights, without property, and without marriage; wearing a distinguishing dress, by which they could know each other and count their increasing numbers, they formed indeed a dangerous class—dangerous through their vices, their misery, and their

strength. A healthy condition of social and public life was under these circumstances impossible, and outbursts of rage and revenge which in the shape of slave-revolts occurred periodically in the history of Rome were the symptoms of an incurable disease. If, nevertheless, instances of magnanimity and virtue can be found among slaves, this only shows that human nature cannot be entirely exterminated in man by any amount of brutality or injustice. But such phenomena were rare exceptions, and did not materially moderate the fatal effect which the institution of slavery produced.

Influence of religion and law.

The influences which acted upon Roman morals were essentially the same as those which now and at all times chiefly determine the actions of men. Neither religion nor law produced deep or lasting effects. Religion was almost exclusively directed to one object, the teaching and enforcing of formal and ceremonial duties towards the gods; law was limited within sharply defined bounds, and watched over the performance of obligations demanded in social and political relations. Morality had within these lines a wide scope for the free development of personal character in views and actions; and this moral liberty, unaffected by religion or law, was directed only by the conscience of individuals and of society, the inborn sentiment of what is morally allowed or prohibited that lives in every human being, and pervades every human society as public opinion.

The censorial control of morals.

In antiquity, and still more in modern times, a great influence upon the morals of the Romans has been attributed to an institution which had originally no connexion with morals or religion, but served purely political and administrative purposes. It is the so-called control of morals (the *censura morum* or *regimen morum*) vested in the censors. The ancient writers speak of it with a kind of pride and admiration.[1] In our own time we often

[1] Dionys. xviii. 19: οἷς ἀποδέδοται τοὺς ἁπάντων Ῥωμαίων ἐξετάζειν βίους, καὶ τοὺς ἐκβαίνοντας ἐκ τῶν πατρίων ἐθῶν ζημιοῦν. *Id.* xx. 3. Plutarch, *Cato M.* 16. Zonar. vii. 19. Liv. iv. 8, 2: Idem annus censuræ initium fuit, rei

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hear the opinion pronounced that morality nowadays would be in a far better condition if the Roman institution of the moral censorship were introduced into modern society. It has been looked upon as a most effective complement to the formal law of the state; and a great part of the Roman purity of morals, as one is fain to call it, is attributed to this institution.[1] This opinion we consider in its extravagance erroneous and untenable, and we will endeavour to reduce to its just dimensions the praise due to the influence of the censorship upon morals.

Objects aimed at by the censors.

If the Romans themselves were mistaken in their appreciation of the extent to which the censors could and did influence public morality, it is explained by the fact that they were, almost without exception, under the delusion that a man's moral worth is determined by his external mode of life, and especially by the rate of his expenditure. Hence the unceasing war that well-intentioned legislators waged with all kinds of luxury, and the poetical and philosophical declamations against gold, and the vices which it engenders. On this opinion was based the respect for censorial severity; and excessive expenditure was the object against which it was principally directed. In proportion, therefore, as modern thought has risen above that narrow and one-sided view, we must tone down the extravagant praise bestowed on the censorial office, and judge more soberly of its effects.

Censorial classification of citizens.

The care of the public morals, as we have seen, did not originally form part of the official duties of the censors. It was but the unintentional, though perhaps natural, result of their duty of distributing the citizens according to their property into the five classes of the centuriate comitia. The censors had to test the capacity

a parva origine ortæ, quæ deinde tanto incremento aucta est, ut morum disciplinæque Romanæ penes eam regimen esset. Cicero, *Pro Cluent.* 46, 129: Præfectus moribus, magister veteris disciplinæ ac severitatis. Cicero, *De Leg.* iii. 3, 7: Censores . . . mores populi regunto.

[1] Mommsen (*Röm. Gesch.* i. p. 311) says that the moral censorship of the Romans was the cause of the preservation of moral and politica purity in the body of citizens. Jhering (*Geist des röm. Rechts,* II. i. p. 50) calls it the 'guardian and support of morals.'

of every citizen to serve the state. This capacity depended on the means which a man had of supporting a family, of keeping together the family estate, and of preserving in his own person the qualities demanded of the citizen and the soldier. As it was impossible for the censors to apply fixed rules when they drew up their lists, they necessarily allowed themselves to be guided to a great extent by their own private judgment. The classification they made could not be called in question or reversed by any other magistrate, or by an appeal to the people. Now, as the drawing up of lists for the senate, knights, and the five classes of citizens placed in the hands of the censors the power of raising or lowering the civil rank of individuals, as the placing of persons into a higher or a lower class of the census had for its consequence the raising or diminution of taxation, the censors were furnished from the beginning with a very extensive power of rewarding and punishing. But this purely administrative duty of the censors had in itself nothing to do with a guardianship of public morals. It was exclusively concerned in determining the relative proportion in which each citizen had to contribute to the necessities of the state. The thousands of vices and sins which pollute man and infect society without offending against penal law or encroaching upon a neighbour's rights; the faults which the moralist and satirist expose and which wise men lament—all these were beyond the reach of the censorial power.

Limits of censorial duty.

On a survey of all the cases reported of the exercise of the moral censorship,[1] it seems difficult to understand how this office should ever have been thought to possess any efficacy or even influence in improving the habits or the tone of morality in Rome. We learn from them that to some extent the censors only filled up the gaps which had been left here and there by the imperfect organization of the civil order and the laws. Thus the bad conduct of soldiers before the enemy, their insubordination or negli-

[1] A complete list is given by Mommsen, *Röm. Staatsr.* ii. 1. 349.

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gence in the service, and the like,[1] really ought to belong, not to the forum of a moral censor, but of a court-martial. Negligence in the performance of their prescribed duties on the part of subordinate public servants, abuse of official power, of the functions of a juryman, or of the right of voting, are offences which should be punished, not by a moral censor, but by a penal judge. Negligence in the performance of religious duties, we should think, might have been left to be corrected by priests alone.[2] The case is similar with regard to other acts by which the established law was broken. If even perjury was looked upon merely as an offence against morality, and, as such, was branded by the censor, we can find in this circumstance a proof, not of the usefulness of the moral censorship, but of the imperfect state of the criminal law.[3] On the other hand, it appears to belong to the proper and peculiar domain of the guardian of public morals to restrain the paternal and conjugal power, and thus to open the interior of the family to the control of the common law. The censor, in punishing excessive harshness or excessive leniency, in protecting women, children, and slaves, acted according to the milder views of a more civilised age, and established the authority of the more highly developed state over that primeval condition of society in which each family was almost independent and governed by the monarchical power of its chief. Thus the censors appear in this department also simply as men employed in carrying out a reform in the moral and political order of society, which had already been sanctioned, and by no means

[1] Liv. xx. 53, xxiv. 18, xxvii. 11. Valer. Max. ii. 9, 7.

[2] Of the duties of civil magistrates in the superintendence and control of public worship we shall treat lower down, in chapter xiii. See p. 261.

[3] A false oath is, in truth, a religious offence; it was argued that it ought, therefore, properly to be resented by the deity, not by the civil power, as the Emperor Tiberius justly and pithily remarked: Iusiurandum perinde æstimandum, quam si Jovem fefellisset [*i.e.* the perjurer]; deorum iniurias diis curæ. This perhaps explains why the criminal law did not deal with the offence. We might have expected that the pontifices would possess a right of punishing perjury; but this was not the case.

owed its origin to them.[1] Whether the censorship was the fittest instrument to enforce obedience to a purer and milder code of manners we shall presently see, when we come to examine the form of proceeding adopted by the censors, and their peculiar qualification for the office of moral guardians.

Practical work of the censors.

Thus the very small sphere of action left for the censors was a kind of neutral ground between the provinces under the control of positive law. If the censors punished dishonesty in business, neglect of the respect due to relations, bad domestic management, extravagance, and even suicide, they might, if they were judicious, exercise a wholesome influence; and no objection can be raised to this kind of action, except what has already been hinted at, and will be more fully explained lower down, that moral teachers are ill qualified for their work unless they are themselves above the charge of transgressing the rules they inculcate.

Restraint of extravagance.

The most important services rendered by the censors to public morality were, in the opinion of the ancient writers, the repression and punishment of extravagance in domestic and personal expenditure. But even here they took only a secondary part; for the application of the provisions of the luxury-laws was, as a rule, in the hands of other magistrates. As it was impossible so to elaborate these laws as to provide against all possible offences, it was found necessary to entrust the censors with discretionary power to act in the spirit of these laws and to supply their omissions. Thus in this respect also the censorship appears efficacious and useful only because the law itself was imperfect and weak. But a law directed against luxury, so long as it is carried out in a strictly legal way, though it may be of little use, cannot do

[1] To what extent the censors succeeded in mitigating the rigours of ancient custom in the relation of father to son, of husband to wife, or master to slave, it is impossible to say. Here, indeed, they had ample scope for action. But the little that we hear of their interference does not impress us with the idea that kindliness and justice, affection and duty, domestic purity and dignity, were very much benefited by their 'care of morals.'

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any great harm; it cannot very injuriously interfere with the liberty of individuals which is threatened by it, because it is restrained from caprice by the guarantee of legal forms. If, however, a magistrate like the censor, without being obliged to apply fixed principles of law, is guided only by his own personal feeling, and decides questions of fact without a regular legal investigation, and such evidence as a court of law would require: in short, if he acts arbitrarily and capriciously, as the Roman censors did, it may be questioned whether, even with the best intentions for promoting public morality, he will not do more harm than good.

Arbitrary action of the censors.

This will appear no exaggeration if we examine the procedure followed by the censors in the exercise of their supervision of morals. They were not obliged to examine witnesses, to hear a defence, or to take positive laws for their guidance. Their personal conviction concerning the guilt of a citizen sufficed for their decision, and the measure of the punishment depended entirely upon their good sense and judgment. Not even usage could create a kind of unwritten law to which successive censors might have considered themselves in any way bound.[1] Each new censor acted according to his own personal views, and thus it happened that strict and lenient principles alternately succeeded one another. Usually the censors showed much leniency and indulgence,[2] but from time to time a censor alarmed or shocked the public by his severity. Cato, the model censor, furnished the most striking example of the latter. He is reported to have expelled a senator from the senate for having kissed his wife in the presence of his daughter.[3] In assessing property, the same Cato proceeded with the one-sidedness of a fanatic, taxing at pleasure certain articles of property

[1] Pliny, *Hist. Nat.* viii. 51, 77; xxxiv. 6, 14, mentions 'leges censoriæ;' but it is not probable that these 'leges' were at all like the 'edicta prætoria,' which laid down strict and binding rules.

[2] Livy often speaks with approval of those censors who in drawing up the senatorial list were mild and generously connived at delinquencies.

[3] Plutarch, *Cato M.* 17.

high or low,[1] according to his approval or disapproval of their use. Other censors—for instance, Marcus Antonius and Lucius Flaccus—went so far as openly to defy public opinion, the will of the people, and the law, by turning out of the senate a tribune who had moved and carried the abolition of one of the useless luxury laws.[2] It is scarcely possible that such arbitrary conduct, which went contrary to public opinion, should have had that effect upon the offenders, and upon the people in general, which a just punishment always has when it deserves and obtains universal approbation.

Qualifications of the censors.

The moral influence of the censors will be estimated at a still lower rate when we inquire what title and what special qualification they possessed to act as judges of public morality. Surely no one will think slightly of the efficiency of a priestly order if such an order is raised above the general level of the people by means of special education, of intellectual power beyond the average, of professional organization or nobility of caste; if it is furnished with the magic of a peculiar sanctity, of an ascetic mode of life, of a supernatural power derived from God; or even if it can keep the mass of the people in awe by the terrors of the invisible world. Such an order of priests can act powerfully for good as well as for evil. But the Roman censors were far from being in the possession of such power. They were not even priests or priestly officials, but simply political magistrates. They were elected, like all other magistrates, by a political body, on grounds of political qualifications or political influence. The standard of their personal morality was by no means higher than that of the average of their colleagues and fellow-citizens. Though the censorial office stood in rank and dignity at the head of all republican offices, and, being the most sacred magistracy (*sanctissimus magistratus*), was regarded by all Roman statesmen as the reward obtained

[1] Liv. xxxix. 44. Plutarch, *Cato M.* 18. Compare the anecdote of the censor Sempronius related by Plutarch, *Ti. Gracchus*, 14.

[2] Valer. Max. ii. 9, 5.

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after years of faithful service, and as the summit of all honours, we know, nevertheless, by numerous instances, what, indeed, we might infer even without any positive proofs, that a long life spent in party quarrels and contests of ambition is not calculated to purify the mind of political passions and of the failings of ordinary mortals. We know that among the Roman censors there were men so passionate and excitable, unjust, revengeful, selfish, and pedantic, that they could not pretend to stand as models of good conduct to the community. It happened that from personal enmity one censor stigmatized the other;[1] that a censor in a fit of spiteful spleen degraded thirty-four out of the thirty-five tribes to the class of ærarians, or citizens without political rights;[2] that another censor inflicted punishment for an untimely but innocent jest. It is plain that such men were suited for anything rather than to be preachers and guardians of morality. But the people by no means required purity of conduct in these so-called moral judges. Quintus Fulvius Flaccus, who was censor in 173 B.C., committed the sacrilege of carrying away the marble tiles of the temple of Juno Lacinia in Bruttium, to use them for covering a temple which he was building in commemoration of a victory in Spain. He was censured by the senate, and compelled to restore the tiles, and when a short time afterwards he died by his own hand, his death was interpreted as a punishment for his impiety. Yet this man was censor and guardian of public morality.[3] Lucius Scipio, convicted of having embezzled large sums of public money, was not prevented from becoming a candidate for the censorship. He had apparently favourable prospects of success, and succumbed only

[1] As a colleague's intercession invalidated every decree of a magistrate, such mutual aspersions produced no effect beyond the offence given by an act of personal spite and passion.

[2] Liv. xxix. 37. This outbreak of a half-crazy temper gave such scandal that a tribune of the people brought an action against both censors, Livius and Claudius, which was hushed up by the senate, 'ne postea obnoxia populari auræ censura esset.' Comp. Plin. *Hist. Nat.* xvii. 1.

[3] Liv. xlii. 3, 28, 10.

to the exertions of his rival. Lucius Cornelius Lentulus after his consulship (156 B.C.) was condemned for extortion, but was nevertheless chosen censor soon after (147 B.C.).[1] What value was attached by the people and senate to a censorial reprimand was seen when Cato, as censor, expelled Lucius Flaminius from the senate because at a banquet he had so far forgotten himself as to kill an innocent man to please a favourite boy.[2] In spite of Cato's censorial condemnation, the people allowed the brutal murderer to keep his place among the senators in the public festivals, thus disapproving, in the most striking manner, the decree of the moral judge. L. Cæcilius Metellus had been deprived of his full civil rights and classed among the *ærarii* for the cowardice he had shown after the battle of Cannæ. Nevertheless, he was in the following year elected tribune of the people, and thus the censorial sentence was solemnly set aside by the people.[3] Surely an office the efficacy of which depends principally upon public opinion is powerless when it is so emphatically disavowed by the people.

Transitory nature of the censorial decrees.

Apart from the drawbacks just mentioned, the censorial decrees must have failed in producing lasting effects, inasmuch as they were in force only during the time of office of those who issued them. On the expiration of a censorship, the new holder of the office might act in the same spirit as his predecessor, or in precisely the contrary spirit. Every man affected by a censorial degradation might hope to be restored to his lost honours. Success depended upon the result of the next election, and thus the much-praised censorship of morals was made dependent upon the result of electioneering agitation—*i.e.* upon the basest, most disgraceful intrigues, tricks, and, occasionally, on acts of violence. Even during the censor's term of office his decrees necessarily lost a great part of their moral influence from the chance that they might be reversed after a new election.

[1] Valer. Max. vi. 9, 10.

[2] Liv. xxxix. 42; Plut. *Flamin.* 19.

[3] Liv. xxiv. 18.

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Later notions of the censorship.

The censorship was practically abolished by Sulla. After Sulla's death, when his reforms were set aside, the censorship in its whole extent, with the duty of watching over public morals, was revived; but it would have been really a farce if in the general dissolution of the old institutions and political habits some fanatic for civic virtue had tried to play the part of Cato. Therefore Cicero and the better sort of his contemporaries, as well as the historians of that time, looked upon the old censorship of morals as a lost palladium, and deluded themselves with the belief that this office might restore the old civic virtues which they dreamed of. Such mistaken sentiments were the origin of the exaggerated estimation of the censorship which, strange to say, has continued down to our time.

Roman virtues and vices.

Drawing a conclusion from these reflections on the customs of the Romans in the good time of the republic, we arrive at the following result. As the strictly organized family forms the basis for the national life of the Roman people and the starting-point for the development of the state, so also Roman morality and private economy were determined by the influence which the same family organization exercised upon every member of society. The preservation and prosperity of families was the first condition of civil society, and consequently imposed upon every member of it fixed duties, by which the free action of purely selfish motives was restrained. Labour, frugality, self-sacrifice for the good of the house and state were the active virtues of the old Roman peasant. He was trained to practise simplicity in life, honesty in actions, moderation in enjoyment, severity towards himself, submission to the law, regard for the rights of fellow-citizens. These were the sound elements of the old morality. But the bounds which custom set to the encroachments of citizen upon citizen did not apply to foreigners. A man as a human being was little respected. It was only as a fellow-citizen that he could claim to be treated with justice and kindness. Towards subjects and

foreigners the Romans displayed unmixed selfishness, and practised it without the least regard for equity or the laws of humanity. When Rome began to be over-powerful, the Romans displayed, with ever-increasing cynicism, the vices of a strong man conscious of his strength and regardless of the feelings of others. Too proud to practise common deception, they did not steal, but they robbed. They despised the vices of the feeble who endeavoured to maintain themselves by cunning and deceit. They, to a great extent, resembled the Turks, who also combine a certain respectability and personal dignity with coarse brutality and heartless cruelty.

General results of luxury and the growth of large estates.

Thus by the great successes of the republic not only was the old constitution of the town, which had been admirable, turned into a curse; not only was the old economical system of the Roman peasantry exchanged for the cultivation of the land by proprietors of large estates, but also the original simplicity, moderation, domesticity—in short, all the virtues of poverty, were lost. Avarice, cupidity, love of pleasure, which had formerly been kept within narrow bounds, now flourished upon abundant conquests, and respect for the law yielded more and more to the habits of violence. The time approached when, upon moral as well as upon political ground, the old order of things was found to be worn out and decayed.

CHAPTER XIII.

RELIGION.

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Original meaning of the word 'religion.'

THE word 'religion' is a legacy left to the modern world by the Romans. Like many other words of a similar class, it is apt to mislead when we apply it in the history of the ancient world. We naturally connect with it those conceptions with which we are familiar, and which are more or less general at the present time in all parts of the civilised world. We are not sufficiently alive to the vast contrast between what we call religion and the 'religio' of the Romans. The danger of mixing up heterogeneous notions in the use of the same word can only be avoided if we carefully sift and distinguish all those ideas which are of modern growth, and exclude them from the definition of the words as applied to antiquity. But even that is not always sufficient. In numerous instances, not only have new ideas been connected with an old word, but whilst a word has remained in use unchanged the thing which is designated by it has been changed in its innermost nature.[1] These remarks apply with particular

[1] This applies more or less to all the words which do not designate unchangeable natural objects. The notions connected with such words as horse, dog, tree, stone, water, fire, hill, valley, river, sea, sun and moon, &c., differ little from the notions connected with the corresponding Latin words. But when we come to words like *magistratus*, magistrate; *res publica*, republic or state; *sacerdos*, priest; and especially when we compare abstract nouns, such as *pietas*, piety; *amor*, love; *caritas*, charity; *conscientia*, conscience; we find that the modern words, whether derived etymologically from the Latin words or not, differ so widely that they often suggest ideas entirely foreign to the older words. Our whole system of elementary teaching tends to blunt our appreciation of these different shades of meaning. Boys in school, and their masters too, are generally content to translate *virtus* by virtue, *pietas* by piety, *religio* by religion, and so forth, and by degrees they fancy that the two are identical, thus laboriously acquiring a vast amount of wrong notions.

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force to the word 'religion.' The great revolution in feelings and ideas concerning the Deity that characterises the modern world has removed us so far from the ancient world on these subjects that it requires a great effort to comprehend their peculiar nature.

Later extensions of its meaning.

First of all we must put aside everything from the definition of religion that is due to the teaching of Christianity. We must imagine a state of society in which dogmatic theology did not exist, where those things were not to be found to which the Christian Churches attach the utmost importance, which most deeply stir up religious life, and which have inspired numbers to enthusiasm, fanaticism, persecution, and religious wars. We must imagine the non-existence of a distinct, learned priesthood, of the entire magnificent organization of the Christian Church, standing on its own separate basis independent of the state; we must try to forget everything that is or has been connected with the Church as such—the cure of souls, the preaching of revealed truth and divine morality, the administration of sacraments which affects even the relations of civil life; we must bear in mind that there were in antiquity no ecclesiastical orders and religious houses possessed of vast wealth and social influence.

Religion and the state.

Even after setting aside these matters as extraneous to the religion of ancient Rome, we shall find that what remains does not belong entirely to the domain of what we call religion. The Christian Church has always claimed a guiding influence upon the morals of her members, and has undertaken to proclaim, not only what men should believe, but also what they should do. The religion of the Romans, on the contrary, had no direct bearing on actual morality. The doings of a Roman with regard to civil and social duties were regulated by law and custom, which were influenced by public opinion and by his own conscience,[1] not by religion and by priests. If a murderer, a perjurer, a man who had inflicted an injury

[1] How small was the influence of the censorship of morals has been shown

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on his neighbour or client, was threatened with the vengeance of the gods, it was because the gods were looked upon as guardians and protectors of the civil order at a time when state and society had not yet outgrown their primitive, theocratical condition. It was necessary that the gods themselves should punish offences as long as no civil authority was established for the purpose. When civil power was first organized upon a secular foundation, the apparent religious influence on morality was superseded by the penal law. On the other hand, those actions which are under the control of the individual conscience, which, untouched by laws of command or prohibition, are left to the free choice of every person, remained in Rome uninfluenced by religion. The consciousness of sin and the longing for its expiation, with which the Christian religion has sanctified the human heart, were feelings entirely unknown to the Romans. Their conscience was swayed, not by what we call religion, but by a general feeling of what is fair and equitable between man and man.

Province of religion.

Thus religion as understood and practised by the Romans dealt with problems different from those of the religion which we practise or profess to practise; it had nothing to do with the faith and very little with the moral condition of men. Its chief end was to enforce the divine law. Religion in Rome was a compact, a mutual obligation between God and man, which bore a strong resemblance to the covenant of the Old Testament.[1] The very word 'religio' indicates a bond and binding, like the corresponding term 'obligatio' of the civil law. Man undertakes to discharge certain duties, such as sacrifices, prayers, the celebration of festivals, and other services to

(p. 241 ff.), and yet it is clear that the censors could venture further in interfering with the private actions of individuals than any priest.

[1] This similarity seems to have struck Tertullian, who says (*De Præscript. Hæret.* 40): Si Numæ Pompilii superstitiones revolvamus, si sacerdotalia officia et insignia et privilegia, si sacrificalia ministeria et instrumenta et vasa ipsorum sacrificiorum ac piaculorum et votorum curiositates considéremus, nonne manifeste diabolus morositatem illam Iudaicæ legis imitatus est?

the gods, and expects in return divine protection.[1] Now, as there is always great danger that man may neglect or overlook something in these duties, religion always inspires fear and awe. Nothing but a knowledge of divine law as minute as that possessed by the pontifices can insure an accurate compliance with all that is demanded, or can guarantee the frail worshipper from the consequences of any oversight or neglect. But if man has fulfilled all that the gods can justly demand of him, he is entitled to claim some service in return. What he desires is protection from enemies, protection from the hostile powers of nature, from disease, from failure of crops, and in fact from all physical evils. Religion, like civil law, serves a most obvious practical end, and in order to gain this end man readily submits to the restrictions and sacrifices which civil order as well as religion imposes.

Roman piety.

In accordance with this conception of religion, the virtue of piety (*pietas*) was to the Roman by no means what we understand by that term. It was 'justice' towards the gods.[2] It was the return for benefits received. A Roman could not fancy it to be offered up freely to the gods by an impulse of the soul.[3] All duties were strictly regulated, and were consequently of a formal character, determined by number and measure. A worship coming

[1] This idea, it is true, is found at the bottom of all religious systems. But nowhere was it ever so systematically developed as in Rome. It seems that the legal subtlety of the Romans, which in later times produced the most perfect body of civil law, displayed itself even in the infancy of the nation by working out the legal character of religion to all its consequences.

[2] Cicero, *De Nat. Deor.* I. xli. 115: Est enim pietas iustitia adversus deos. The parallelism between *pietas* and *iustitia* is clearly explained by Cicero (*ib.* I. ii. 4): Atque haud scio an pietate adversus deos sublata fides etiam et societas generis humani et una excellentissima virtus, iustitia, tollatur. The conception of *pius* is to *iustus* what *fas*, divine law, is to *ius*, human law; *pietas* comprises all religious duty, *iustitia* only civil duty; the former is due, not only to the gods, but also to parents, children, all relations, even to clients and suppliants, especially to the dead. It requires 'iusta reddere,' to perform our duty to the dead. A war which is approved by divine and human law is a 'bellum iustum piumque.'

[3] Cicero (*ibid.*) says: Quæ pietas ei debetur a quo nihil acceperis? The distance between *pietas* and piety can hardly be expressed in more striking words.

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from the heart was not dreamt of. The sacred days and hours, the nature and number of sacrifices, the manner of sacrificing, the formulæ of prayer, attire and position in praying, everything that belonged to this religion of ceremonies was minutely prescribed, and could be executed according to these prescriptions by anyone. Thus religion was but an external form, a mere rite, a shell without a kernel; it had neither invigorating warmth, nor nourishment for the soul, nor an image for the mind; it could supply no energy for moral life.

Influence of Greek and Eastern thought and belief.

This emptiness and weakness of the national religion explains the circumstance that the religious philosophy of the Greeks and the fanaticism of Oriental nations so soon found their way into Italy. When the Romans, after a long period of national isolation, first came into contact with the Greeks, they were deeply moved by the speculations concerning the nature of the gods embodied in Greek myths, in plastic art, and in painting. The entire Greek Olympus was introduced into Italy; the pale phantoms of Latin deities, Jupiter, Mars, Diana, Venus, were imbued with life by being identified with Zeus, Arès, Artemis, and Aphrodite. The sober rites of the old time were coloured with a tinge of enthusiasm. Images of the gods[1] were placed in the temples. To the unintelligible litanies of the Salians and other priests, couched in a forgotten language, were added hymns composed by living poets after Greek patterns;[2] the professional divinations of the augurs were supplemented by prophecies of the gods coming from the mouth of the Sibyl; the festivals of the gods received their noblest adornment in the drama.

Yet it must not be imagined that by these innovations

[1] According to a statement of Varro (quoted by St. Augustin, *De Civit. Dei*, iv. 31), the Romans for more than 170 years had no images of the gods. Whatever one may think of the precise date, there is no reason to doubt that at first the Romans and other Italians had only symbols (such as lances, stones, fire), and no images in the shape of men, to represent their gods. See Arnobius, *Adv. Nat.* vi. 11. Plutarch, *Romul.* 29. Servius, *ad Virg. Æn.* viii. 641.

[2] Vol. ii. p. 383.

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Unchanged character of Roman religion.

the nature of the old religion, the religious sentiments and thoughts themselves, became entirely changed. In all essential points they remained what they had been. Some new shoots were engrafted on the old stock without changing its nature. However the externals of public worship were refined and adorned, the fundamental character of the Roman religion remained what it was, and exercised no more influence on practical life than before.

Alleged discovery of the books of Numa.

Nor were the Romans much encouraged by Greek influence to speculate on the nature of the gods. Only a few of the more eminent minds occupied themselves with the foreign philosophy. The mass of the nation was contented with the traditional ideas or want of ideas, and the state more than once made great efforts to prevent the importation of Greek notions on things connected with religion. A curious attempt was made to introduce some of these speculations surreptitiously when, in the year 181 B.C., the alleged books of Numa were dug up,[1] containing views about the gods entirely at variance with the old Roman conceptions. These books were burnt by order of the senate, and the foreign doctrine was thus rejected, at least in so far as it affected the official religion of the state. But as intercourse with Greece became more and more active, Greek philosophy necessarily gained ground in Italy, at least among the educated, in spite of all attempts to keep it out. Notwithstanding the hostility with which Cato and all genuine Romans opposed it, teachers of Greek philosophy found increasingly attentive listeners in Rome. Every grammarian, rhetorician, and poet who came over from Greece brought with him a certain amount of Greek philosophy, and the influence of this philosophy upon the system of the national religion was of course confusing and destructive. This was the case especially after the time when rationalism was preached in Greece by Euemerus. So long as Zeus was adored in Olympia as the true father

[1] Vol. i. p. 33.

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of gods and men, the Roman Jupiter could not but gain authority and influence by identification with him. But when it was taught that the beings worshipped as gods were but eminent mortals; when the entire mythology melted away into philosophy, leaving behind for the common populace nothing but superstition, then came a time of danger for the state religion also in Italy, and it became more and more difficult to maintain a system which made the prosperity of individuals and of the state dependent upon a conscientious observance of laws which had ceased to be respected as divine.

Maintenance of old forms and rules.

However, though the original spirit had departed from these laws, they were nevertheless preserved by the force of habit, which nowhere exercises so lasting an influence as in the external forms of a deeply-rooted religion. These forms are like vessels which can hold in succession various kinds of substances, and they often continue to be used with good effect, as the majority of people judge more from the label than from the contents.[1] Hence it might appear to superficial observers that the sacred law as established by Numa remained continually in force; nor can it be denied that, in spite of all foreign elements intruded into it, and in spite of the growing indifference of the people, which weakened its innermost life, it by no means entirely lost all significance and value, even after Greek philosophy and Oriental fanaticism had found their way to Rome.

Political deities.

Whilst the entire circle of gods comprised in the national religion of the old Italian races were either confounded with analogous Greek deities or forgotten altogether,[2] the case was different with the gods that

[1] The apostles of Christianity had little difficulty in overthrowing the faith in the gods of the Greek Olympus, and in ridiculing the myths of Zeus and Hera, of Apollo and Artemis and all the rest. But they were obliged to make a compromise with the religious ceremonies, the feast-days and all the externals of worship, and often to pour the new wine into old bottles. Is not the same tenacity of old practices in religious matters visible still?

[2] Of many of the ancient Roman deities nothing was preserved in later periods but the name. Ovid, Varro, and others, poets and antiquaries, were reduced to conjectures about their nature and attributes.

were in some special way connected with the family and the state, and which, in contrast to the gods of nature in general, might be called political gods. These were necessary and indispensable for the preservation of family and state. Their service, therefore, had to be maintained at the expense of those who were supposed to be especially benefited by them, and they had something of the jealousy of the Jewish Jehovah, and would suffer no other gods by their side.

Household deities.

The deities of the house were the Penates, Lares, and Manes. They disposed of life and death, and their abode was on the household hearth or in the family grave; their priests were the father and the mother of the family; their community of worshippers consisted of the members of the family, including the slaves. Every stranger was excluded from this private worship.

The worship of the family, the *gens*, and the state.

As the family circle was enlarged to form a *gens*, thus the circle of the protecting gods became larger. The enlarged family was placed under the special protection of a tutelary power selected for that purpose from the whole range of divinities. A compact was made stipulating on the side of man for service and worship, on the side of the gods for protection. The sacred places and rites (*sacra gentilicia*) belonging to each *gens* were consigned to the care of the *gens*, and the maintenance and prosperity of the *gens* depended upon a conscientious observance of the family worship.[1]

The supreme god of the state.

As *gentes* were combined to form larger political associations, such as curiæ and tribes, we find that simultaneously analogous forms of worship were devised and protecting deities placed at the head of each new association. The state, finally, in which all these partial organizations were summed up and comprehended, could

[1] It is well known that a particular worship of Hercules belonging as a private rite to the *gens* of the Potitii was taken up by the state in 312 B.C. Liv. ix. 29, 9. It was generally believed that in consequence of this neglect of the family god, the whole *gens* became extinct within a year's time. Probably the service in question was undertaken by the public at large because the *gens* of the Potitii was already on the point of becoming extinct.

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only be established and maintained by the proclamation and worship of a supreme protecting god acknowledged in due form by all members of the community alike. The worship of this god became a civic duty; its neglect was reputed treason; it was as important to keep it pure and to observe the recognised, legally introduced rites as to obey the civil laws of the state.

The Capitoline Jupiter.

From this relation of religion to state followed as a necessary consequence the supremacy of the latter over the former. The final object that religion had in view was the prosperity of the state upon which it was itself established, and without which it had no independent existence. As the Roman state depended on the protection of the Capitoline Jupiter, thus also the preservation of the Capitoline temple, the continuance of divine worship in it, nay, the adoration of Jupiter, itself depended on the existence of his adorers and on the prosperity of the state which acknowledged him as its supreme god. If the state perished, the temples also must decay. Other nations worshipped other gods; they took no part in the worship of the gods of a foreign or hostile town. The preservation of the political community was therefore the first and most important duty of religion; and its servants, the priests, were not less interested in the performance of this duty than the political magistrates themselves. This close connexion between state and religion, this mutual dependence explains that a conflict between the two could never take place. Only a Church standing by itself and independent of the state and pursuing her own special interests, a Church which spreads far beyond the limits of a particular state, can venture to be at variance with the state. It can do this more easily in proportion as it is self-supporting and as it is organized and governed by principles peculiar to itself.

Priests and magistrates.

As the connexion between state and religion was most intimate, priests and political magistrates were closely allied to one another, and often their offices were united

in the same person. To a certain extent, indeed, all priests and servants of the gods of the state might be regarded as political magistrates. The pontifices had actually to discharge certain duties in connexion with administration and government which placed them on the same level as the other servants of the community;[1] the augurs and the keepers of the prophetic books were in reality subordinate magistrates.

Absence of a priestly class.

On the other hand, the magistrates had to perform certain religious functions,[2] such as sacrifices, prayers, vows, and dedications of temples. Nay, when the purity of religion and the old worship of the national gods seemed to be exposed to dangerous innovations, recourse was had, not to priests, but to political magistrates for the protection of religion.[3] Thus a prætor destroyed the false books of Numa;[4] the consuls suppressed the Bacchanalia;[5] the censors expelled the foreign teachers of philosophy;[6] and the senate had the especial duty of superintending public worship.[7] But what was above all calculated to

[1] The pontifices presided in the comitia curiata when testaments were acknowledged or approved, and arrogations were made; they had also the duty of regulating the calendar which involved the fixing of the days for popular assemblies and for judicial-business, the *dies fasti*, *nefasti*, and *comitiales*. Besides, they played an important part at the first appointment and at the re-establishment of the popular tribunes. According to Livy (iii. 54, 11), the tribunes were elected under the presidency of the Pontifex Maximus. Here are functions which are all more political than religious.

[2] Mommsen, *Röm. Staatsr.* II. i. p. 120. Becker, *R. Alt.* II. ii. 119.

[3] Liv. iv. 30: Datum negotium ædilibus ut animadverterent ne qui nisi Romani dii neu quo alio more quam patrio colerentur.

[4] Vol. i. p. 33.

[5] Liv. xxxix. 14, 9.

[6] A censor, Appius Claudius, not a pontifex, as might have been expected, effected the transfer of the worship of Hercules from the Potitian *gens* to the state. Liv. ix. 29, 9.

[7] When (213 B.C.) foreign superstitions began to find favour with the people, the senate took the matter in hand, blamed the ædiles and the *triumviri capitales* for having suffered the evil to come to a head, and commissioned the prætor 'to deliver the people from these superstitions.' Liv. xxv. 1. Such proceedings of the Roman magistrates against foreign gods and foreign modes of worship are identical in spirit and intention with the later persecutions of Jews and Christians. They had nothing in common with religious intolerance arising from fanaticism, but were simply political measures directed against a danger which threatened, not the national religion, but the safety of the state.

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maintain the supremacy of the state was the circumstance that there was in Rome no peculiar order of priests. Priests were not distinguished from laymen either by descent or by special training and education. They had no peculiarities in life or habits; they did not practise celibacy or castration.[1] There was no superior sanctity attributed to the priests and recognised by the people which might have given rise to spiritual pride or love of command. The same men held magisterial and priestly offices. At first, it is true, priests remained exempt from onerous public services and the magistrates were restricted to their own political functions. But the law required only of one priest, the king of sacrifices (*rex sacrorum*), that he should not be elected to any public office.

Election of priests by the people.

In course of time it became common for consuls and prætors to be elected among the pontifices and augurs, and even the priestly dignities of the three *flamines*, or chief priests of Jupiter, Mars, and Quirinus, were conferred upon men whom we might call laymen; nor did such a double character give the slightest offence.[2] As a natural result of this secularisation of the priestly offices, the election of priests was transferred to the people,[3] and though this popular election differed in form from the election of the civil magistrates,[4] it was nevertheless to all intents and purposes a popular election in the place of the former mode of co-optation.

General position of the priests.

The subordination of the priesthood to the state was the more complete because they had no sufficient revenues of their own and were accordingly dependent on state help. Although some of the temples were endowed with

[1] Castration was practised by the priests of the great Asiatic Mother of the Gods.

[2] Liv. epit. 19; xxxi. 50, 6; xxxvii. 47, 8; 51, 1; xxxix. 39, 2, 4, 5, 2; epit. 59.

[3] Mommsen, *Röm. Staatsr.* II. i. p. 24. Becker, *Röm. Alt.* II. iii. p. 84.

[4] Instead of the total number of thirty-five tribes, seventeen tribes, drawn by lot, were entrusted with the election, first of the Pontifex Maximus, afterwards (103 B.C.) of the other pontifices, the augurs, the keepers of the Sibylline books and the *epulones*.

portions of land, yet the annual state budget was charged with the cost of the erection and repair of temples as well as with the expenses of public worship, especially of the games. The Roman priests never succeeded in imposing the payment of tithes upon the annual produce of land; they could not establish themselves as the most extensive landed proprietors; they never obtained judicial authority in family matters,[1] and the female mind, so easily subject to the influence of crafty priests, was protected from them by the stern authority of the head of the family. The priests were not even able to make good a claim to exemption from the general duties of common citizens, such as that of paying taxes.[2]

Moral qualifications of priests.

Under such circumstances the Roman priests were not in a condition to exercise, as a body, any intellectual or moral influence among their countrymen. Nor was a high degree of moral dignity required of them any more than of the magistrates. The priestly office, moreover, does not appear to have imposed upon its occupants any special restraint or the practice of a special morality. Q. Fulvius Flaccus, although pontifex and censor, committed a daring robbery in depriving the temple of Juno Lacinia of its marble tiles, and bringing them to Rome to adorn a temple which he had himself built.[3] During the Hannibalic war a man known throughout the town for his disorderly habits was chosen to be a priest of Jupiter.[4] Nowhere can it be proved that the priests, as such, made pretence to a peculiar sanctity of life, or that the people of their own account attributed it to them. The only exception were the Vestal virgins. They were allowed special distinctions, honours, and privileges. But in return for this they had a peculiarly heavy responsibility,

[1] The jurisdiction of the Pontifex Maximus was confined to punishing priests for neglecting their official duties. This included the punishment of the Vestal virgins for the crime of unchastity, and of their accomplices, even though the latter were not priests.

[2] Liv. xxxiii. 42, 2.

[3] Above, p. 248.

[4] Vol. ii. p. 477.

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and in case of neglect they had to dread a horrible punishment.

The Pontifices.

The character of a legal system so peculiar to the Roman religion is particularly apparent in the office of the pontifices. This college of priests under the presidency of the Pontifex Maximus, though at the head of the entire religious system, had far more a judicial than a priestly character. In the older time, when divine law had yet the preponderance over civil law, the pontifices were probably the most important personages both in making and in administering the law.[1] Even in historical times they were the guardians and interpreters of the law long after it had begun to cast off the fetters of religion.[2] But the pontifices were more and more obliged to confine themselves to decisions about the due observance of religious ceremonies, and to exchange their original office of judges for that of interpreters of law in the literal sense of the word—that is, legal advisers in doubtful questions to the senate and the magistrates.

Ignorance and sluggishness of the priests.

The college of pontifices as a body entrusted with public authority for the conduct of the religious affairs of the nation was more firmly and systematically organized than any similar body in any Greek state. Had the Roman people been such abject slaves to the priestly order as the Oriental and Celtic nations, had they had the slightest inclination to allow themselves to be guided in worldly matters by a priestly caste or to be tortured by religious fears, the college of pontifices would have been an instrument of which superstition might have made great use. But the pontifices were far from wishing, like the Papal Church, to encroach upon the domain of the state. They did not expand the religious system over which they presided into one of universal control over all the relations of life, and when in course of time the foundation of their system began to give way, when scepticism and foreign

[1] Jhering, *Geist des röm. Rechts*, i. p. 291, § 18*a*; ii. p. 374 ff. § 42.

[2] Liv. ix. 46, 5: Cn. Flavius civile ius, repositum in penetralibus pontificum, evulgavit.

influences began to undermine it, they neglected to prop it up by new supports. With their purely formal rules and ceremonial laws they could neither exalt nor lower the traditional spirit of their religion; they could not even keep it alive. They also neglected the means which an intellectual superiority would have given them in the domain of science and art. Although they should have fanned the spark of intellectual life that was so feeble in Rome, they were not ashamed to rest satisfied with their scanty knowledge of nature and mathematics, and to apply it in a merely mechanical way. Their position in the state should have urged them to the promotion of literature and to the cultivation especially of those branches of learning which are practically useful in every-day life; but they left it to others to take the first steps in matters like these. They continued year after year to fill the national annals (the famous *annales maximi*) with dry lists of names, to note eclipses of the sun or moon, floods, droughts, pestilence, famine, and the like, without making an approach to genuine historical narrative. Even the collection of laws that one or several pontifices compiled, and which bears the name of Laws of the Kings (*leges regiæ*), seems to have been a worthless compilation, unfit to serve as the foundation upon which succeeding generations of jurists might have built up a national system of jurisprudence. Everywhere we can observe that the opportunity was not seized for creating in the college of pontifices a power which might stir up the intellectual and religious energy of the people, and impel them to independent action.

The augurs.

The augurs, who stood next to the pontifices in dignity and importance as the official interpreters of the will of the gods, sank still more into habits of empty formality. Whilst the pontifices had at least occasion to cultivate a kind of science in systematising their doctrines and rules, and basing their system upon the laws of nature and society and upon speculations on human and divine right, the augurs occupied themselves with a discipline which from beginning to end rested on a delusion,

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where everything was arbitrary and unreasonable—a discipline which had sprung up in the infancy of society, and had outlived the years of this infancy only because a large portion of mankind never arrive at years of discretion and desire always to be treated as children. The doctrine of the augurs had even at the time of the Punic wars come to be the derision of the educated; but it did not for a long time lose its hold on the minds of the ignorant classes. The result was that the *auspicia* more and more changed their original character, and became an instrument of political intrigue. At last, when an augur proclaimed that the consent of the gods was withheld from any proposed measure, this divine intercession differed in no way from the intercession of a tribune or any other magistrate. Every election, every act of legislation or government, could be delayed or declared to be null by the announcement that unfavourable signs had appeared in the heavens. As the veracity of these announcements could be proved only by the voice of the priest who had observed the heavens, nothing was easier than to make use of a pretended divine intercession for the purpose of annulling any objectionable resolution of the people; nay, to render this process more easy it was decided by a law in the course of the second century B.C.[1] that no popular assembly should be held if a magistrate declared that he intended during the same time to take the *auspicia*. This law, on which Cicero bestows unqualified laudation as a support of civil order against the revolutionary designs of the tribunes, was probably necessary from a political point of view. It supplied the want of a constitutional veto against the legislative omnipotence of the tribunes and the *comitia tributa*. But it was a mockery of the old piety which had originally inspired awe and fear of the divine will and of the *auspicia* as its signs. It is only a matter of surprise that when the old religious belief had long disappeared it was still thought possible to make use of the *auspicia* for the purpose of resisting democratic innovations.

[1] Below, chap. xvi.

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As the recognised and official *auspicia* declined more and more in the general esteem, other kinds of prophecy naturally sprang up; for that decline was by no means due to the growth of enlightenment, but to the long-practised abuse and consequent contempt into which the national divination had fallen. The introduction of the Sibylline books may be regarded as the first novelty in the genuine Italian mode of ascertaining the will of the gods; and this innovation was of the greatest influence, because the Sibylline books were officially recognised and consulted by the state. The keepers and interpreters of them formed a regular 'collegium;' their number was increased from two to ten at the time of the Licinian laws,[1] and they ranked immediately after the augurs. Such authority, however, as the latter and the pontifices enjoyed, was never gained by the 'decemvirs for sacrifices,' as these keepers of the Sibylline books are called, and the reason is obvious: their services were required, not regularly, like those of the other priests, but only on certain occasions. Besides, the jealousy which a true Roman always had in his heart for what was Greek must have contributed to counteract the influence of the Greek prophecies. The duties of the decemvirs for sacrifices in no way corresponded to their official name, for they had nothing to do with sacrifices in general. Their attention was directed to the worship of those gods who were introduced in consequence of the recommendation of the Sibylline books, and who therefore did not belong to the national gods of Rome and the national religion superintended by the pontifices.

The Sibylline books and their guardians.

The superstition of the people, which was not satisfied by the religion of the state, appears to have been abundantly nourished by a number of religious adventurers, both national and foreign, who made a good living out of the vulgar credulity. Foremost among these in numbers

Etruscan divination. The haruspices.

[1] As a part of the reform of the Licinian laws, which shared the consulship between patricians and plebeians, the office of *decemviri sacris faciundis*, which had charge of the prophetic books, was also shared equally between the two orders of citizens. Liv. vi. 37.

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and influence were the Etruscan haruspices, who read the divine will in the entrails of sacrificed animals, and moreover interpreted the signs and propitiated the anger of the gods manifested in lightnings and prodigies. In spite of the competition which naturally existed between these Etruscan haruspices and the genuine Roman prophets, the former were not only tolerated by the state but even employed in the public service, so that they occupied an acknowledged official position by the side of the Roman augurs. They also formed a 'collegium'[1] similar to those of the pontifices and augurs; they were consulted by the magistrates at the request of the senate;[2] they accompanied the generals in war,[3] and were important personages in the ceremonies connected with public sacrifices and divination; yet their chief practice was in private circles. The augurs were personages of too high standing to be consulted by simple citizens. They served only the state and the magistrates. Thus the haruspices satisfied an actual want by undertaking to offer their services to private families and individuals, by telling them when it was a good time to set out on a journey; whether a proposed bargain was likely to be profitable; if certain persons could be trusted; or if the crops of the coming season would be bad or good. They carried on a profitable trade, and, as they lived upon the superstition of the people,[4] and supported superstition accordingly, they brought discredit upon the whole discipline of divination, and exposed it to the contempt of the educated. Even Cato, surely not one of those who despised the simple faith of

[1] Yet there was an essential difference between this *collegium* and the others. It had no public character, but was a private association, tolerated, indeed, and even patronised by the state, but not established by it and authorised like the *collegia* of the pontifices, augurs, and decemvirs for sacrifices. This was the cause why the number of members was unlimited, and consequently large beyond comparison. It amounted to sixty, and, as it seems, there were private haruspices (besides those included in the *collegium* or guild), who, like quacks or unauthorised lawyers, picked up a living in the back streets.

[2] Liv. xxvii. 37, 6.

[3] Liv. viii. 9; xxv. 16.

[4] Liv. iv. 30, 8; xxv. 1, 8.

the olden time,[1] despised them, and it was he who said that it was beyond his power to understand how one haruspex could abstain from laughing when he met another. In later times, however, when Oriental superstition gained ground in Rome, the Syrian and Egyptian soothsayers, and especially the Chaldæan astrologers, became dangerous rivals of the Italian haruspices.

Interpretation of portents.

In spite of all enlightenment and free-thinking among the educated, the dense superstition of the vulgar remained undiminished, nor were even those men entirely free from it who had emancipated themselves from the old religious notions. The hereditary forms of the public *auspicia* remained the same; new ones (for instance, the divination by means of domestic fowls) were added; all uncommon and striking phenomena of nature were looked upon as portents, and noted with the utmost care throughout Italy and reported at Rome, where they were solemnly 'expiated.' It makes a strange impression when we read in the annals of Livy year after year long lists of these portents and prodigies carefully registered. We wonder how this childish fear arising from 'a liver without a head' or 'a calf with five legs' could be entertained by the same men who reasoned so coolly as senators and generals. These men did not avail themselves of the superstition of the vulgar to obtain political ends by means of religious terrors of which they themselves were free. On the contrary, they shared them, and were swayed by them as much as the meanest of the people. For was it not genuine unfeigned religious terror[2] when a consul rushed into the senate with a pale face and reported that the liver of a sacrificial bull had melted in the kettle in an incomprehensible manner; when the assembled fathers were greatly moved by this prodigy, and the other consul increased the impression by announcing that although he had sacrificed three bulls in succession,

[1] Cato was a genuine believer in magic, charms, and incantations, and has recorded in his book on agriculture how a dislocated joint can be set right by certain ceremonies accompanied by such wonder-working words as 'Daries dardaries astartaries dissunapiter,' &c.

[2] Liv. xli. 15.

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not one of them had a normal liver; when, therefore, the senate resolved to proceed with the sacrifice of larger animals until the gods were propitiated, and when this propitiation was finally accomplished with all except the goddess of health? We cannot conceive it possible that in the year 176 B.C. all those who took part in this scene were acting a farce. The whole period which we have now under review is pervaded by the unbroken influence of primeval genuine Roman superstition, of that 'religio' which shudders at the thought of having neglected anything to avert the wrath of the gods. Sacrifices are offered up regularly and abundantly; *lectisternia*, festivals of supplication and atonement, of thanksgiving and of joy, increase instead of decreasing in number; even the old ceremony of celebrating a 'sacred spring' (*ver sacrum*) [1] was duly performed in 195 B.C. in pursuance of a solemn vow made by the people and government after the battle on Lake Thrasymenus,[2] and as doubts had arisen about the due performance of all the sacred rites, the ceremony was repeated in the following year with a most scrupulous observance of all that the pontifices considered necessary.[3] Temples and games were vowed, and, as if the national supply of religious practices were not sufficient, foreign gods and foreign forms of worship were officially introduced. It would, therefore, be a great mistake to believe that the piety of the Roman people diminished during the Punic wars. It would be wrong to speak of a decline of the old faith and credulity. On the contrary, it is evident that whilst the self-sufficient feeling of righteousness produced by the formal, ceremonial service of the old religion disappeared more and more, a feeling crept over the more enlightened of the people which dis-

[1] Vol. i. p. 153.

[2] Vol. ii. p. 213.

[3] Liv. xxxiii. 44, 1: Consules priusquam ab urbe proficiscerentur, ver sacrum ex decreto pontificum iussi facere, quod A. Cornelius Mammula prætor fecerat de senatus sententia populique iussu Cn. Servilio C. Flaminio consulibus. Liv. xxxiv. 44, 1: Ver sacrum factum erat priore anno. Id cum P. Licinius pontifex non esse recte factum collegio primum, dei de ex auctoritate collegii patribus renunciasset, de integro faciendum arbitratu pontificum censuerunt.

credited the notion of a mutually binding contract with the deity. It seems that religion was more and more felt to be an affair of the heart and the conscience, and that to satisfy the craving for a more spiritual religion it was found necessary to deepen and widen the old channels of religious thought, to direct the mind towards speculations on things divine, and lastly to welcome new religious teachings and practices which appealed more to the feelings, to enthusiasm, even to fanaticism, and to a more intense superstition.

Foreign rites and superstitions.

This tendency was favoured by several foreign influences. The attractions of the Greek religion had long been at work secretly, and were gradually transforming the Roman notions of the gods and introducing Greek mythology. The solemn reception of Æsculapius among the gods worshipped by the state, in the year 291 B.C.,[1] was the first official sanction of this innovation. But when, in the year 205 B.C., the senate resolved to introduce the service of the Phrygian 'Mother of the Gods,'[2] the fanaticism of the East was brought as a new element into the religion of Rome. In the unimaginative, sober faith of the Roman peasants and warriors there had been no scope for fervid, religious feelings, for enthusiasm and for asceticism, self-torture and all the extravagances of crazy enthusiasts. With the introduction of the worship of the great Mother of the Gods this new chord was struck. But the coolness and common sense which were still predominant in Rome did not at once allow full swing to the religious fervour of the Eastern modes of worship. The wild extravagance, the wailing and rejoicing, the convulsions, the barbarous music of cymbals and fifes with which the Mother of the Gods was worshipped in Asia Minor, and at a later period in Rome, were still kept within narrow limits, and as yet the most prominent feature of the foreign worship was the representation of dramatic plays during the Megalesia, the annual festival celebrated in her honour.

[1] Vol. i. p. 555.

[2] Vol. ii. p. 477. Liv. xxix. 10.

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Worship of Bacchus.

But the direction which had been given to the public mind by the new worship was not to be mistaken. It showed itself in the readiness with which a great part of the population gave itself up to the congenial worship of Bacchus. This worship was not introduced by the state, but had nevertheless imperceptibly gained a footing in Rome, and had found numerous adherents. In the absence of publicity and state superintendence fanaticism had spread unchecked among great numbers of people, and at last led to practices which were in glaring contrast to the old religion and habits.

Scandals arising from the worship of Bacchus.

The animated narrative which Livy[1] gives us of the discovery and suppression of the scandals connected with the worship of Bacchus in the year 186 B.C. is perhaps the most interesting sketch of the domestic life of the Roman people that we have, and it affords an insight into details which the proud march of political history generally passes by without notice. The interest of the story is increased by the circumstance that in an inscription of considerable length, the original copy of an edict has been preserved[2] in which the essential part of a senatorial decree was notified to one of the subject Italian towns. As a correct appreciation of this event is of the greatest importance for a thorough understanding of the intellectual life and the civil and religious institutions of Rome, it may be well to investigate the subject, more especially as all the writers of Roman history have hitherto failed to judge calmly and dispassionately of this curious social phenomenon, and have allowed themselves to be misled by hasty and one-sided notions derived from contemporary writers.

Story of Publius Æbutius.

Publius Æbutius, a young man of good family, as Livy reports, consorted with a prostitute, a freed slave named Fecennia Hispala, who, like many women of her disreputable trade, had amassed a considerable fortune. She was so fond of the young man that she fancied she could not live without him. The father of Æbutius was dead;

[1] Liv. xxxix. 8–19.

[2] The *Senatusconsultum de Bacchanalibus* found in Calabria in the year 1640, and now preserved in the Imperial Library at Vienna.

his mother had married again, and the step-father having squandered the family property wished to get rid of the youth. The mother of Æbutius in league with her new husband suggested a plan by which they might compass the young man's ruin or even his death. The worship of Bacchus had been of late introduced by Greek priests first in Etruria and then in Rome. The mother had heard enough of the practices of the members of the new religious congregation to feel sure that a man who joined them was as good as lost. She therefore advised her son to let himself be initiated as a worshipper of Bacchus. Æbutius reported the suggestion of his mother to Hispala. The girl was terrified, and represented to the youth the dangers to which he would expose himself in such glowing colours that he refused to follow his mother's wishes. Hereupon he was formally expelled from the paternal house, and found a refuge with an aunt. At her instigation he informed the consul Postumius of the proceedings of the worshippers of Bacchus. The consul with the help of Sulpicia, his mother-in-law, managed to obtain an interview with the aunt of Æbutius, and thereupon with Hispala. In this manner he discovered the particulars of the Bacchanalian rites, and shuddered at the thought of the danger with which society and the Roman state were threatened. Hispala reported that the meetings of the initiated, which had formerly taken place three times a year, were now held five times a month. Whilst formerly they had been held publicly, they were now shrouded by the darkness of night. Men were now received as members, whereas formerly only women had been admitted; unnatural sensuality and shameful excesses were practised under the cover of religion; those who resisted attacks upon their chastity were abused with violence, some were secretly murdered and their bodies concealed, and it was then given out that they had been carried off by the gods; testaments were forged, false witnesses were suborned, and many similar crimes were committed. The number of these fanatics had increased to an incredible extent, and in-

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cluded not only common citizens but even noble men and women.

Panic caused by the worship of Bacchus.

The consul at once brought the matter before the senate and demanded an investigation. An extraordinary tribunal was established, and rewards were offered to persons who could give evidence of particulars concerning the crimes that had been committed. In the city of Rome and in the whole of Italy, the worship of Bacchus was at once forbidden, the priests were imprisoned, and measures taken to secure the town from arson and other desperate designs of the fanatics who were believed capable of all imaginable crimes. The government thought that it had discovered a gigantic conspiracy directed against the old customs and laws, against wealth, the security and life of every citizen. No one felt safe, or sure that his nearest relations were not among the band of the conspirators. High and low shared the same anxiety. The consul convoked an assembly of the alarmed people to justify the suppression of the foreign fanaticism. Universal fear seized the capital and the whole of Italy. More than seven thousand men and women, it was said, had joined in the conspiracy. Many conscious of their guilt fled or killed themselves, others were denounced and arrested. All who were guilty only of taking part in the Bacchanalian festivals were imprisoned; those who had assisted in committing foul crimes were executed, and these, we are told, were the majority. A senatorial decree confined the worship of Bacchus within narrow bounds, and subjected it to public supervision.[1] The investigation was continued in the next year and repeated in the year 181 B.C.

[1] Liv. xxxix. 18, 7: Datum deinde consulibus negotium est ut omnia Bacchanalia (places of worship) Romæ primum, deinde per totam Italiam dirue-rent, extra quam si qua ibi vetusta ara aut signum consecratum esset. In reliquum deinde senatus consulto cautum est, ne qua Bacchanalia Romæ nove in Italia essent; si quis tale sacrum sollemne et necessarium duceret, nec sine religione et piaculo se id dimittere posse, apud prætorem urbanum profiteretur, prætor senatum consuleret; si ei permissum esset, cum in senatu centum non minus essent, ita id sacrum faceret, dum ne plus quinque sacrificio interessent, neu qua pecunia communis neu quis magister sacrorum aut sacerdos esset.

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Question of the trustworthiness of the story.

These are the facts as reported by Livy. The question is now whether we may believe these startling events as they are reported, or whether we should doubt their correctness, and whether, as external proofs are wanting, we can hope by reasoning from internal probability to reach a conclusion differing from that of the Roman senate on the guilt of the Bacchanalian fanatics. In the first place it is not difficult to arrive at the conviction that the danger which threatened the state and society in the worship of Bacchus was, if not altogether imaginary, at any rate immensely exaggerated. How could a number of religiously excited men and women have endangered the Roman government, even if their number had amounted, as it is reported, to seven thousand? They lacked everything that could have made them formidable, an object, a plan, means, and organization. Although they held their meetings at night and admitted none but the initiated, they were nevertheless not a secret society, and were not conspirators. They marched noisily through the streets to the Tiber, and dipped their burning torches into the water, attracting the wonder of spectators by drawing them out again unextinguished; their proceedings were known in the town; Hispala and the mother of Æbutius apparently were acquainted with all the particulars. People who attracted universal attention in this manner could not entertain the design of setting fire to the town or of overthrowing the state.

Alleged murders of Roman citizens.

More than this. The horrible crimes committed against the life and property of fellow-citizens could not be planned by a religious society as such.[1] Such crimes are not committed in the intoxication of enthusiasm, but by cold-blooded miscreants. On the contrary, a religious society which, separated from the mass, does not enjoy universal sympathy or the protection of the law, is usually

[1] There is, indeed, a parallel in the Indian Thugs, whose peculiar worship included deliberate murder; but the Thugs took care to keep their real character a profound secret. Among European nations no such sect has ever existed except in the heated imagination of those fanatics who, in times of general ignorance, charged the Jews with slaughtering Christian children.

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characterised by peculiar purity of morals and by inoffensive conduct. But even if this were not so, we could not believe the stories of acts of violence committed by the worshippers of Bacchus to be authentic. For even if the Roman police had been more inefficient than it actually was, it was surely not possible for men to be murdered and put out of sight with impunity, and, as it would appear, without notice being taken of it.

Allegations of immorality.

The only part of the accusations against the unfortunate fanatics that is perhaps well founded is the charge of licentiousness and immorality, which were the natural result of orgiastic worship, and which are by no means of rare occurrence in ancient or in modern times. We cannot ascertain how far the Roman worshippers of Bacchus ventured in this matter. It would certainly be wrong to accept as the plain truth all the reports of their enemies and persecutors. The manner in which their alleged crimes were denounced and prosecuted cannot fail, in itself, to make us distrust the impartiality and justice of the procedure. The first information was given by a public prostitute who wished to secure her lover, and had perhaps no other motive than to keep the foolish youth in her clutches. The mother of Æbutius, his aunt, and the mother-in-law of the consul were the persons to whom the government was indebted for the knowledge of an alleged conspiracy—a conspiracy which had already existed for years without being checked, and which counted thousands of members. The investigation gradually gained larger dimensions, especially when rewards had been bestowed on the first informer, and when other informers were invited to come forward by the promise of more rewards. We may confidently say that whenever the evidence of such witnesses is taken the most honest and innocent of men can be convicted of the foulest crimes. The paid informers are a dark blot on Roman criminal jurisdiction, and we will take this opportunity of remarking that they were not an institution called into life by the monarchy, but that they had existed in earlier ages

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Mere calumny, however, would not have had such horrible consequences as the evidence of the woman Hispala had in Rome. We must bear in mind that the accusation was directed against a sect of religious innovators, which appeared to threaten the ancestral religion, and with it the state. In spite of their usual toleration of foreign religions, the Romans now and then showed their attachment to the gods of their commonwealth in the shape of hostility to strange gods. The mystic and orgiastic Eastern forms of worship found a small number of enthusiastic followers but many bitter enemies among the great mass. The introduction of the worship of the 'great mother' must have offended the old religious sentiments of the nation. When the castrated, begging priests of the Phrygian goddess marched through the streets in fantastic attire to the sound of drums and flutes, the old Roman feeling of propriety even in religious ceremonies was necessarily shocked. No Roman citizen was allowed to join this despised class. Now another superstition had silently invaded Rome, as it might seem in consequence of the encouragement which the state had lately given to the new rites. Screened from public inspection it had gained numbers of proselytes, and was constantly spreading. It was above all the secrecy of the nocturnal worship that was displeasing to the Romans. They abhorred all kinds of secret societies from which they apprehended danger to the community. The result of this mixture of fear and antipathy was an outbreak of savage fury and a cruel persecution of a set of religious fanatics, who, however contemptible might be their practices, were probably not more dangerous to the community and to the established religion than other foreign teachers of superstition and fanaticism.

Jealousy of foreign gods.

We have, it is true, no direct evidence in favour of the persons condemned. The prosecution was carried on in the general spirit of religious zeal. Prosecutor, judge, and executioner were united in the same person. It is evident even from the dry report of Livy that the government

Punishment of the worshippers of Bacchus.

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were from the first convinced of the guilt of the accused, and bent upon punishing them.[1] But this one-sidedness of the narrative not only gives us the permission but imposes on us the duty of consulting all historical analogies from which inferences may be drawn in favour of the accused. We may be allowed to recall the charges brought against the first Christians in Rome; we should recollect that they were described, even by such an historian as Tacitus, as 'enemies of the human race,'[2] and how they were exposed to the general hatred of an ignorant multitude, and persecuted without the chance of a fair trial. What could modern historians have had to say about the 'destructive superstition' of those fanatics 'detested for their villanies,' if Christian witnesses had not proved their innocence and purity, and if Christianity had not triumphed over Paganism? The accusations against the Jews, which have so often called forth the savage fanaticism of Christians, may in like manner be considered as standing on a line with the charges against the Bacchanalian fraternity in Rome. Under a bad judicial system these stupid and malignant accusations would not only expose the Jews to the rage of the populace, but would end in a solemn condemnation of innocent persons by thousands. What such a rage for persecution can rise to is proved above all by the history of the so-called popish plot in England in the reign of Charles II. In that instance vile informers invented the whole plot, and brought a multitude of innocent people to the scaffold. The English nation for a long time was possessed with a

[1] This is particularly apparent from the speech of the consul Postumius. Liv. xxxix. 15.

[2] Tacit. *Annal.* xv. 44: Nero subdidit reos et quæsitissimis pœnis affecit quos per flagitia invisos vulgus Christianos appellabat. Tacitus calls the religion of these Christians 'exitiabilis superstitio,' and ranks this evil (*malum*) among the atrocious and shameful practices (*atrocia atque pudenda*) which find their way to Rome from all parts of the empire. He seems to think that some of them were actually guilty of having caused or spread the great conflagration (*correpti qui fatebantur*), but he adds that great numbers were put to death because they were guilty not of this particular crime, but 'odio generis humani.'

kind of desperate madness. Judges and jury, high and low, raged against the accused. A handful of Roman Catholics were charged with intending to set fire to London, to murder the king and all the protestants, and to overthrow the constitution and religion of the country. It occurred to nobody to doubt the reasonableness of such a plan or to ask for evidence. The unproved and contradictory reports of such wretches as Titus Oates and Bedloe were thought sufficient. People were in search of victims and found them. At last they recovered their reason, but it was not until the blood of many innocent persons had been shed.

National delusions and madness.

Such events as these show that there are not only physical but also mental epidemics. From time to time we see whole nations carried away by the current of some maddening illusion, which seems altogether to change their natural disposition. Phenomena of this kind are very frequent. We have on previous occasions remarked a tendency of the Romans to yield without reserve to groundless apprehensions, which are so often the symptom of mental derangement. The numerous prosecutions of Roman matrons for alleged poisoning[1] are probably mere outbreaks of mental aberration. But they are especially pernicious if they are in some way connected with religious fear, because man then feels himself placed within the reach of incalculable forces. It was doubtless an outburst of religious hatred of this kind that led to the persecution and suppression of the Bacchanalia.

Probable facts of the case.

We have already remarked that it is impossible to ascertain to what extent the Bacchanalia in Rome, besides favouring fanaticism and religious enthusiasm, were the cause of immoral and criminal practices. Perhaps we may take the indulgent view that the worship of Bacchus was not worse in this respect in Italy than in Greece, where it had existed for centuries without any more pernicious effect than other forms of religious and social immoralities. But supposing that the coarser and more

[1] Above, p. 231 ff.

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sensual nature of the Romans and the novelty of the worship caused the element of licentiousness to be developed more strongly than in Greece, we should nevertheless be inclined to think that the real cause of the movement was a craving for a more spiritual form of religion, an honest and genuine religious excitement; in fact, something akin to what is called a religious revival. It would be taking a very unjust and superficial view of the matter were we to charge the participators in the Bacchanalian rites with hypocrisy, and with the cool design of hiding their licentiousness under the cover of religion. It is even in our day not an uncommon phenomenon that persons of great excitability and imagination feel dissatisfied with a monotonous worship consisting of stereotyped forms, and that individuals and whole congregations are convulsively seized and carried away by religious enthusiasm. Whoever has once seen and heard a community of excited worshippers will look upon their screaming, raging, rejoicing, and howling, their gesticulations and rolling of eyes, their praying and cursing, as nothing but a religious rage which, however revolting and unreasonable it may appear, is nevertheless at bottom of a spiritual and not a sensual nature. Hence we believe that the Bacchanalia in Rome were not, as they are usually represented, a horrible plot for the destruction of state and family, not a deliberate organization for licentiousness and murder, but an attempt, though a vain attempt, to escape from the desolation of a religion of unmeaning forms which offered no comfort to the heart, no peace to the conscience, no scope for higher religious aspirations, no means of rising to a religious life which exalts man from the mechanical formalism of worn-out ceremonies to spiritual excitement, to enthusiasm, to a forgetfulness of self, and to a longing for a union with God.

Magnificence of the religious games.

This movement was for the present suppressed by the relentless hand of the civil magistrate. The Roman religion continued to be a lifeless routine of set prayers and sacrifices, and to compensate by external pomp for

the want of internal vigour. The religious festivals became more numerous and more magnificent, especially the games, which, although in their original conception they formed part of the divine worship, nevertheless so fully satisfied the love of pleasure that their connexion with religion could no longer be more than external and purely formal. To the oldest of the Roman games had been added in course of time the Plebeian games, those in honour of Ceres, of Apollo, of the mother of the gods, and of Flora.[1] The time of celebrating them was gradually extended to several days each, and on some pretext easily found whole sets of them were played a second, or even a third time.[2] Simultaneously the magnificence and variety of the games increased.[3] The sums of money supplied by the state no longer sufficed. The liberality of the magistrates had to come to the assistance of the public, and this, as we have seen, was the origin of that peculiarly Roman form of corruption, the expenditure of the magistrates silently establishing their claim to higher honours.

Roman love of spectacles.

The Romans were a people excessively fond of public shows. They felt a never-flagging delight in processions, pageants, triumphs, shows, and spectacles of all kinds. This taste was abundantly satisfied not only by the frequent festivals and games arranged by the state, but furthermore by extraordinary celebrations for the gratification of family pride or the ambition of individual nobles. A favourite way of attracting popular attention for generals was to promise games as a proof of gratitude for victories gained or not gained, as the case might be. If only the enjoyment was great, the people did not care to scrutinise the veracity of the rich man who declared that in exhibit-

[1] Vol. ii. p. 473. On the public games see Friedländer in Marquardt's *Röm. Alterth.* iv. 473 ff.

[2] The *instauratio* generally took place on the ground or pretext of some informality in the first celebration. Comp. Ritschl. *Parerga*, p. 309. The year 191 B.C. was especially rich in public festivals. Liv. xxxvi. 36.

[3] In 186 B.C. the first fights of wild beasts (*venationes*) were introduced (Liv. xxxix. 22) by M. Fulvius at the celebration of his victory over the Ætolians.

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ing a public show he was discharging a debt of gratitude to the gods.[1] Funeral games in honour of a defunct father came to be looked upon more and more as a simple act of filial piety which a Roman in a high position could not easily neglect, especially as it increased the glory of his family and his own credit with the people.

The old Latin festivals.

Considering the extraordinary multiplication of holidays, all of which had in form at least a religious character, it is not to be wondered at that many of the more simple old festivals and religious acts were neglected, and even forgotten. It is true that the more important festivals, the Lupercalia, the Saturnalia, and the like, continued to be kept with great solemnity, for the whole nation took part in them; but when only single families or classes and localities celebrated a festival, the usual business life and the daily traffic of the town were little disturbed by religious ceremonies. At the Quinquatria the flute-players celebrated the festival of their guild. The goddesses of Fortune for men and for women, the gods of seedtime and harvest, of the vine, of navigation, &c., had each their own set of worshippers, and probably many such deities were worshipped almost in private, with scanty sacrifices, in out-of-the-way places, at half-ruined altars. Religion, like language, customs and laws, like literature and taste, was undergoing a constant change, and could not possibly preserve old institutions in unabated vigour whilst new ideas and new forms of worship were being received in great number.[2] Although the conservatism with which the Romans clung to what was old often preserved usages, the meaning of which had been forgotten, more especially in matters of religion, yet the old system was fast decaying, as it was not based upon sacred books, upon confessions of faith carefully drawn up, and upon dogmas solemnly recognised. The religion of Rome was not one of those from whose coherent system

[1] Livy, xli. 6, 4, shows that sometimes formal inquiries were made into the truth of such reports of victories, for which special honours were claimed.

[2] Marquardt, *Röm. Alterth.* iv. p. 74.

not a little can be removed or altered without causing a complete collapse. In the same manner as the Roman dominion spread and gradually embraced the old world, and as by this gradual process of development the narrow circle of Roman citizenship was enlarged into a cosmopolitan citizenship, thus also in the religion of Rome that which was purely national gradually disappeared by being merged into a religion of humanity.

CHAPTER XIV.

CULTURE, ART, SCIENCE.

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Ancient Roman literature.

WHILST the Romans in politics and law remained free from the influence of foreign states, and thus were indebted only to themselves for their greatest and most memorable performances; whilst in religion they mingled national and foreign elements, and superficially overlaid their simple and prosaic conceptions of the deity with Greek imagination and Oriental fanaticism, the development of literature took another direction. It altogether abandoned its native standard, and passed under the absolute dominion of Greek taste and Greek rules of art. This process began as soon as the Romans came into contact with the Greeks. When Livius Andronicus had with one single stroke transplanted the Greek epic poetry and the Greek drama, tragic as well as comic, the victory of Greek over Italian literature was decided; and, as has been shown in a former chapter,[1] the growth and development of the new literature went on almost without check or interruption. But the mode of its development was different from that of the literature of Greece, where its origin and growth were natural, spontaneous, and uninfluenced by foreign nations.

Foreign influences.

A literature which is moulded on foreign models, and therefore strives after an ideal which has been already attained by others, does not attempt to go beyond this ideal, but sees perfection attained in proportion as it approaches these models. If, as was the case with the Romans, and has since been the case in other European countries, a nation does not become acquainted with its

[1] Vol. ii. p. 474.

model literature until this has passed the climax of its development and is on the road to decay, the imitating literature seeks its models in those productions which are nearest to it with respect to time, in the later works of its instructors; and not until it becomes more intimately acquainted with its ideal does it aspire to the full understanding and imitation of those works which stand highest.[1] At the same time it gradually strives after greater purity, *i.e.* correctness in imitation of the forms of the original; it relinquishes more and more all claim to individuality, original treatment, and invention; it becomes more slavish and more incapable of working out genuine national masterpieces.

The earlier Roman poets.

On comparing the productions of the earlier poets, Livius, Ennius, Nævius, with those that followed, such as Plautus, Terence, Cæcilius, Pacuvius, and Attius, and these again with the masterly perfection in form attained by Horace and Virgil, we find a good illustration of this phenomenon. The older writers, still working to a great extent in the national spirit, took from the foreign literature only their patterns and materials in general. Nævius, following Homer, wrote a national Roman epos in the Saturnian verse. Ennius, advancing further on the path of imitation, found his materials in native Italian history, but adopted the hexameter verse to which the Saturnian verse was sacrificed. Plautus borrowed materials and pattern from the Attic comedies, but he clothed the Greek characters in a drapery so decidedly Roman that they appeared to the spectators like old acquaintances. He generally gave Latin names to his plays, and composed his verses with that freedom in the treatment of metre which distinguishes the popular poet from the metrical artist. It is different with Terence. In his case genius is overbalanced by art. The verses are more regular, the language more refined, the Greek tone more purely pre-

[1] The Romans when they became acquainted with the Greek dramatists admired Euripides more than Sophocles. So did the French and English after the revival of letters.

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served, the models more strictly and faithfully imitated. Imitation already begins to approach the character of a translation. It is quite in keeping with this closer approach to the Greek models that his plays are no longer called *Miles*, *Captivi*, or *Mercator*, but *Adelphi*, *Hecyra*, and even *Heautontimorumenos*.

Tragic and comic poets.

The attempt at purity and correctness naturally involves a greater restriction of the poet to special departments. Livius, Ennius, and Nævius were productive in all branches of literature; whereas Plautus, Cæcilius, and Terence wrote only comedies; Pacuvius and Attius only, or at least almost exclusively, tragedies. The work became more artistic, and required more special study.[1]

Poverty of Roman imagination.

Thus Greek poetry made its victorious entry in Italy, though not without a struggle, for in tragedy and still more in comedy, which grew up with far greater vigour, considerable and persistent attempts were made for some time to cultivate and to improve the natural productions of the soil. Tragedy in the 'prætexta,' the Roman garment of honour, comedy in the national 'toga' (*fabula prætextata* and *fabula togata*), treated at least national subjects, though they had no national form of art that could compete with the foreign. Such a form of art might have been perfected if the *Atellanæ* and *Mimi* had been thoroughly cultivated; but all attempts failed because

[1] Not in literature alone, but in all departments of art, the same phenomenon may be observed, and points to the existence of a general law. The epic poetry of the middle ages, the romances of the Trojan war and of Alexander, the Knight's Tale of Chaucer, and the like, were anything but slavish imitations of classical models. It was not Homer, nor even Virgil, that was the great favourite and pattern of the time, but Statius. At the period of the renaissance people began to study the classical poets of the best time and to imitate them. The result was the studied and correct but less original productions of the classical school, such as Milton's *Paradise Lost*, Racine's *Phædra*, Klopstock's *Messias*, and Göthe's *Iphigenia*. In architecture the same spirit of imitation has produced similar results. The Romance and the Gothic styles of architecture, which are offshoots of the latest styles of antiquity, were far more original than the modern classicism which is the outcome of an accurate study of the best productions of the Greek architects. A true imitator is not satisfied until he has caught all the detail in forms and proportions of his model, and has divested himself of everything that may savour of originality.

Roman imagination was not sufficiently rich and luxuriant. If we remember the strong feeling of nationality which the Romans possessed, and the pride of the noble families, we should be inclined to think that such poetic productions as the tragedy *Paullus*, by Pacuvius, or *Brutus*, by Attius, would have been admired and imitated; that the heroic deeds of great ancestors would have been represented to the people, not only in panegyrics and funeral orations, but also on the dramatic stage, and that the historical drama would have been cultivated by Roman Marlowes and Shaksperes. This was not the case. The same poverty of imagination which prevented the creation of a national mythology, a poverty which shows itself in the productions of the annalists by the utter absence of rich and attractive fictions, and which compelled these writers for want of other resources to confine themselves to the feeble trick of exaggeration and repetition, prevented the growth of a genuine national and independent poetry.

Conditions needed for the assimilation of a foreign literature.

To understand and enjoy the literary productions of a foreign nation, even if they are clothed in a native dress and assimilated to the tastes and feelings of the adopted country, is by no means easy for the great mass of the people. It demands a considerable amount of acquired knowledge, and cannot be accomplished without study. This knowledge and study are within the reach of the higher classes of society, but not of the uneducated, *i.e.* of the great mass. It is therefore surprising that the poetical works of Greece were from the very beginning of their introduction so popular in Rome; that the entire mythology, the heroic legends, the social and family life of the Greeks, their political institutions, all the things that furnish subjects for dramatic plays, could attract and amuse the general public in Rome. We may indeed take for granted that on the whole the popular taste was formed by a fashionable minority, *i.e.* by men of education and social influence. But if the mass of the people do not contribute the warmth of general and hearty

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applause, an imported foreign literature, like an exotic plant, must soon wither and perish in the upper regions of society. The most strenuous efforts made by the courtly circles in the time of Elizabeth failed to secure in England a footing for the drama modelled after the masterpieces of the Athenian poets and the rules of Aristotle. The classical dramas of Daniel and Brandon were coldly received by a small and indifferent public, whilst in the popular theatres of the Globe and Blackfriars crowds of spectators listened with enthusiasm to the works of Shakspere and Fletcher. We must suppose that owing to frequent contact with the Greeks, to the union of the Greek and Italian religion, to the general similarity and simplicity of all ancient forms of state, society, and family, the Romans very soon came to understand the structure and the substance of Greek poetry. Besides, that which is common to all human nature, though dressed up in a foreign costume, is so easily detected that even if some details remain unintelligible the impression of the whole is little impaired.[1] Nay, it is well known that what is but half understood often makes upon the half-educated a far deeper impression than that which is altogether plain and comprehensible.[2]

Dramatic poetry.

This is the case more especially with poetry intended not to be read, but to be heard and seen. When the eye assists the understanding, and one scene rapidly follows upon another, the intellect, however conscientious, has no time to meditate on the difficulties, but it advances from place to place propelled by enjoyment. The introduction of Greek poetry in Rome was effected chiefly by

[1] There can be no doubt that those Shaksperian plays the fables of which were borrowed from Italian novels, contained as much that was novel and unintelligible to an English audience as the Latin plays with Greek mythology and Greek domestic manners in them.

[2] In all modern poetry, English, French, German, Italian, there is an apparatus of Greek mythology which must be sorely puzzling to the majority of readers. The good sense of our own time begins at last to discredit these false jewels.

means of the stage. Few only were able or inclined to read. Books intended to be read were therefore very scarce. The Odyssey of Livius Andronicus indeed was a reading book, but a reading book only for schools. The epic poems of Ennius were destined to be read aloud in a small circle of distinguished patrons; the Punic War of Nævius was probably not widely circulated. But the dramatic stage was an attraction for the whole people. The Romans, as we have said already, were very fond of all sorts of shows; and thus dramatic representations, especially comedies, became gradually very popular. A large number of dramatic writers found employment. Their productions followed each other in rapid succession.[1] If only a very small portion of them has survived, it is because the manuscript remained in the hands of those who arranged the festive games, and was in fact intended only to be produced on such occasions.

Plays and stage-players.

As dramatic poetry in Rome served chiefly for popular entertainment and amusement, we cannot wonder at the little respect felt for playwrights and stage-players. A Roman of good family considered it derogatory to his dignity to occupy himself with poetry; it even involved a kind of dishonour to have friends or companions who were poets. The first men whom the Muse inspired to write in Latin were foreigners, most of them slaves or freedmen, and they earned a scanty livelihood as literary drudges and schoolmasters. Stage-players were stigmatised with public dishonour, and they were liable to the ignominious punishment of the rod. No freeborn Roman could venture to make his livelihood in so dishonourable a profession. Poetry was regarded more as a waste of time than as an amusement; and if theatrical plays had not been a political necessity, they would certainly have been condemned by the censors. The people wished to be entertained, and therefore strict Roman virtue agreed to a compromise. But it unwillingly submitted to what it could not prevent.

[1] The popularity of the Elizabethan stage plays and the comparative rarity of printed dramas offer some pointed analogy.

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The theatres were constructed of wood, and removed as soon as the festive occasion was over. They must have been wretched structures; a mere platform for a stage betokened the infancy of dramatic art. Permanent theatres of stone with seats for the spectators were expressly proscribed, as if the conscience which protested against the frivolous amusement could be quieted by rendering the representations more difficult and expensive, and by diminishing the pleasure and comfort of the spectators.[1] A wooden theatre which appears to have been constructed about the year 179 B.C., to serve not as a temporary but a permanent structure, seems to have been pulled down again shortly afterwards. As late as the year 154 B.C. a similar attempt to construct a permanent theatre was frustrated by a senatorial decree.[2] The first theatre built of stone was consecrated by Pompeius in the year 55 B.C.

Gladiatorial spectacles.

This want of respect for the dignity of poetry is explained by the coarse nature of the Italians, which was at bottom the cause of the feebleness of their national literature. They were far more pleased by representations in which mere brute force was displayed. Nothing was so popular in Rome as gladiatorial combats and the fights of wild beasts, sights of which it may fairly be said that they are hardly compatible with a genuine taste for real poetry.[3]

It may appear strange that in spite of this predilection for what was bloody and dangerous the Romans had no

[1] Valer. Max. ii. 4, 2: Senatus consulto cautum est, ne quis in urbe propiusve passus mille subsellia posuisse sedensve ludos spectare vellet, ut scilicet remissioni animorum iuncta standi virilitas propria Romanæ gentis nota esset.

[2] Liv. xl. 51, 3: Lepidus theatrum et proscenium ad Apollinis . . . . . locavit. That this stage (proscenium) and seats for spectators (theatrum) were removed again by the year 154 B.C., is implied by Livy, epit. 48: Cum locatum a censoribus theatrum exstrueretur, P. Cornelio Nasica auctore tanquam inutile et nociturum publicis moribus ex senatus consulto destructum est, populusque aliquamdiu stans ludos spectavit.

[3] Yet bear-baiting and cock-fighting were popular amusements in England at a time when the drama flourished. At present, when dramatic genius is all but extinct, they would fail to attract the better classes even if they were tolerated by law.

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liking for the pleasures of the chase. They were certainly not deficient in animal courage nor impatient of bodily exertion; and yet they were not touched by a passion for sport to which all Germanic races have been, and still are, devoted almost to madness. Perhaps it was the practical common-sense of the Romans that kept them from this amusement. It was not lucrative for great gentlemen to preserve and to hunt game; the killing of wild beasts and the catching of fish were therefore regarded simply as trades and menial occupations, a notion which altogether excluded these occupations from the privileged pleasures of the rich.[1]

Absence of liking for the chase.

If the Romans were not gifted with poetical feelings, and if they looked upon poetry from a utilitarian point of view as a superfluous, time-wasting, frivolous occupation, it followed as a matter of course that they saw sufficient reason for the cultivation of prose, which was practically useful in private affairs and in the management of political business. Hence the phenomenon that, if not a prosaic literature, at any rate a prose style applicable to business, was developed in Rome long before the primitive effusions of poetry had acquired artistic forms calculated to stamp them as real literary productions. The Roman administration involved a vast amount of writing; the business of the census alone presupposed familiar acquaintance with

Roman prose literature.

[1] A singular exception is made by Scipio Æmilianus. When he accompanied his father Æmilius Paullus on his expedition to Macedonia in the war with Perseus, it so happened that the royal preserves were well stocked with game, because during the war the regular hunting had been intermitted. Scipio, availing himself of this circumstance, practised and became skilled in hunting. Having thus acquired a taste for the chase, he continued the exercise even after his return to Italy, and this habit was one of those which distinguished him from the other young men of his age. Polyb. xxxii. 15. Here we have indeed an exception which proves the rule. The love of sport seems now to have gained ground in Rome, but still very slowly. It is amusing to see how the younger Pliny combined it with literary occupation. He tells Tacitus in a letter (epist. i. 6) that he caught three boars, but that he took care to have his writing tablets at hand, so that if he came home with an empty bag he should at least have something to show in his book (ut si manus vacuas, plenas tamen ceras reportarem). He boasts of the same ingenuity in several letters (v. 18; ix. 36, 6), as if he wished to excuse himself for sacrificing valuable time to frivolous pleasure.

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and considerable skill in the art. The various collegia of priests and magistrates had, from time immemorial, their official documents and archives; the decrees of the senate were embodied in writing and carefully preserved; the official chronicles of the pontifices, the lists of the magistrates, and a number of records could only be composed after writing was in tolerably general use. From the publication of the laws of the decemvirs and the law-book of Cn. Flavius,[1] it is evident that the art of reading was by no means confined to a few, and that writing was practised extensively.

Earliest prose writers.

All the early legal and chronological documents do not, however, constitute a prose literature. But the funeral orations (*laudationes*) and the family chronicles based upon them were in truth a rudimentary history. Had not the prevalence of Greek taste induced the oldest annalists to write their works in the Greek language, a Latin prose style would have been formed as early as the Hannibalic war. Foreign influence therefore injured the development of national literature in the same manner as writing Latin in the middle ages kept back the literary development of the modern languages. Cato is the first who can be regarded as a writer in the literary prose of the Romans. It required the Roman pride of such a man to break through the fetters of foreign taste and to make good the claim of the Latin language in that department of literature in which alone the Romans were great and independent of the Greeks. Nevertheless even Cato did not succeed at once in giving a new direction to the taste of his countrymen, for there were Roman aspirants to literary fame even after Cato, who were not afraid to expose themselves to just ridicule by their broken Greek.[2]

[1] Vol. i. p. 446.

[2] Even as late as the second century before Christ the annalist P. Rutilius Rufus, consul 105 B.C., wrote an historical work in the Greek language. Athenæus, iv. 66, p. 168 E. This is however explained by the fact that Rufus lived many years in Smyrna in banishment. The annalist A. Postumius Albinus in his preface craved the indulgence of his critics on the ground of his not writing in his mother tongue, upon which Cato justly remarked that he saw

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Cato.

It was Cato's great merit that he asserted the rights of his native language for literary prose compositions. His Origines, or accounts of the rise and growth of the Italian nation, contained what he knew of the earlier history of Rome and the more important Italian towns. These accounts were but the introduction to his history, which he brought down to the latest period, finishing it with the events of which he had himself been a witness or an actor. His own exploits and even his speeches occupied a considerable portion of these books. Cato was too much of a Roman to hide his own light under a bushel. His historical writings, therefore, bear the character peculiar to all early Roman productions of this class. They are moreover the result of the personal or family interest which the writers had in the events narrated. Hence they treated the history of the whole nation from the point of view of a house chronicler, and they were intended first of all for the use of the family itself. Most likely Cato, writing for his son, intended that he or his descendants should find in his historical work abundant material for his own memorial oration.

His versatility.

Cato, however, by no means restricted himself to the one department of history. He who on every occasion censured the habit of speaking and writing too much, distinguished himself above all others by speaking at great length on every possible occasion, and in his advanced age he resorted to writing books with the zeal of a young man eager for literary fame. Nay, he did not shrink from studying the language and literature of the Greeks in spite of his boasted dislike of their character. With wonderful versatility he tried his hand at everything that can interest a practical statesman and citizen; he wrote on general rules of conduct, on eloquence, on law, on the art of war, and chiefly on agriculture. His book on this latter subject, the only one that has been preserved entire, does not call forth great admiration of the

no reason for an excuse, unless Albinus had been compelled to write Greek by the Amphictyonic council. Polyb. xl. 6.

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scientific and literary talents of the author, and still less of the humanity of a virtuous Roman (*vir bonus*) according to Cato's ideal.[1]

Roman literary tastes.

All the other prose writings belonging to this period —for instance, the writings of some orators and lawyers such as those of Sextus Ælius Pætus—seem to have been of small importance, and none of them have been preserved.[2] For elementary instruction teachers made use of the text of the twelve tables and the Odyssey of Livius Andronicus. The higher kind of instruction was given either by Greek literati, who were mostly slaves or freedmen, and naturally did not include in their teaching the productions of Roman writers, or it consisted in learning the principles of the existing law, and of political institutions, or in the practice of eloquence. The Roman youth received such instruction from his father or from paternal friends. For this purpose handbooks like those of Cato were written; but they were not absolutely necessary. Beyond this the Romans did not go. They had neither time nor taste for general reading and books of entertainment.

Roman scientific ignorance.

As the Romans had such a strong sense for what was useful and practical, and had no predilection for the idle play of fancy, one would expect that they would the more resolutely have devoted themselves to those sciences which have for their object the investigation of the laws of nature, and that they would have tried to make them subservient to the wants of man. But this is precisely the department in which they made the least progress. They did not even manage to make themselves masters of the very moderate amount of knowledge gained by their predecessors the Greeks and the Eastern nations. In mathematics and astronomy, in natural science and medi-

[1] Cato's work on agriculture in the form in which it has come down to us may have suffered from various hands, but the plan and substance must be Cato's. It is nothing but a jumble of rules and receipts without any system or order. Nevertheless it is highly interesting and instructive, as it gives an insight into the private life of a genuine Roman of the old school.

[2] Teuffel, *Röm. Liter.* §§ 123–125.

cine, they never got beyond the rudiments, and, it would appear, never felt the least desire or natural impulse for earnest investigation. They hardly acquired so much knowledge and skill as was absolutely necessary to make the ordinary calculations and measurements, to keep the calendar to a certain extent in accordance with the seasons, and to apply plants and animals for agricultural and economical uses. The imperfection of their performances, even within these narrow bounds, is sufficiently known. The pontifices, as the state astronomers, allowed the calendar to fall from year to year into more hopeless disorder and confusion.[1] To make discoveries of natural laws they were utterly unable.[2] Surely the usefulness of a division of the day into hours must have struck the Romans at an early period. Yet not even the idea of a sundial occurred to them spontaneously; and when on the taking of Catana in Sicily a clock of this kind was brought to Rome in the year 263 B.C., no one dreamt of doubting that in the latitude of Rome it would indicate the time as correctly as it had done in Sicily. It was nearly a hundred years before they discovered their error, and caused a correct sundial to be constructed.[3]

Causes of the ignorance.

Thus all application of science to architecture, to the construction of roads and aqueducts, to land-surveying, agriculture, and medicine, was of a purely empirical nature, and there existed no materials for a scientific literature on these subjects. The cause of this phenomenon, which at first sight appears strange, is not difficult to discover. A people who see in all natural phenomena the immediate interference of a deity, a deity whose will is capricious,

[1] This disorder was not the result of ignorance alone. It would not have been very difficult by means of intercalation to keep the civil year in accordance with the seasons. But the pontifices were not ashamed to use their power of inserting intercalary periods for political purposes, for lengthening or shortening periods of office, for serving the interests of the farmers of the revenue, and the like. Cicero, *Ad Attic.* v. 9, 13; *Ad Famil.* vii. 2; viii. 6. Dio Cass. xl. 73. Censorin. 20.

[2] The alleged calculation of a solar eclipse by Sulpicius Gallus in the third Macedonian war forms no exception, as has been shown, vol. iii. p. 249.

[3] Plin. *Hist. Nat.* vii. 60.

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can hardly conceive the notion that the forces of nature work in beautiful harmony and order, and cannot easily be induced to investigate the laws on which the great variety of phenomena depends. It was the natural religion of the ancients, in other words, the conception of natural phenomena as direct manifestations of the deity, which paralysed their spirit of scientific observation and research. For it would have appeared presumptuous to ask for the cause of an eclipse of the sun or moon as long as religion saw in it the expression of divine wrath. Who would have dared to regard lightning as electricity and to conduct it harmless from the sky, as long as he feared in it the Thunderer's terrible weapon destined to strike the impious? The physical forces which cause fertility or the failure of crops, health or disease, life or death, were concealed during the infancy of mankind in the unfathomable decrees of the deity, and it is the nature of every superstition, so long as it preserves its original influence over man, to prevent him from prying into secrets which it alone claims the power to explain.[1]

Medical practice of the Romans.

In no department of science is the backwardness of the Roman mind more surprising than in that of medicine. Bodily health is felt by all men as the greatest of material blessings. Every human being is in the position of being able and almost compelled to make observations. The natural explanation of phenomena, to the exclusion of the

[1] The Greek mind could not be entirely confined within the bounds prescribed by the popular religion. But the philosophers who, like Anaxagoras, first speculated on the general laws of the universe, were exposed to great odium as dangerous innovators. Mr. Grote (*Plato*, ii. p. 269) has some true remarks on this subject: 'Aristophanes,' he says, 'brings odium on Socrates for alleged study of astronomy and meteorology, the heavenly bodies being objects of such reverential admiration and worship that it was impious to watch or investigate them, or calculate their proceedings beforehand. The extent to which anatomy and physiology were shut out from study in antiquity and have continued to be partially so even in modern times, is well known.' Mr. Grote quotes Aristoph. *Nubes*, 145, 170, 1490. Xenoph. *Memorab.* i. 1, 11–13; iv. 7, 6. Comp. *Macrob.* i. 2: Inimicam esse naturæ nudam expositionem sui. The work of Lucretius, *De Rerum Natura*, is an attempt to expound the unchangeable laws of nature, and thus to deliver man from superstition. Comp. book i. 151.

supernatural, is forced upon every individual who has seen or felt the immediate effect of the usual causes of sickness; and yet the Romans neither studied of their own accord the laws of health, nor did they receive an impulse from the Greeks who had ever since Hippocrates a rational study of medicine, free from the superstitious practices of the vulgar. With the growing influence of Greek learning and art, some Greeks skilled in medicine found their way to Rome, but a genuine Roman like Cato the censor would have nothing to say to them. He and most of his countrymen continued to apply their old spells, prayers, sacrifices, or such quack medicines as those described in Cato's receipt book, among which cabbage (*brassica*) in every form, boiled, baked, dried, powdered, decocted, and mixed with other equally potent herbs, was the panacea for every conceivable ailment.

Painting and sculpture.

In the arts of painting and sculpture the Romans had in themselves even less of creative genius than in poetry. They were still more deficient in the plastic sense than in imagination. Besides, the great works of Greek sculptors did not require to be translated into Latin. They could be bodily brought over from Syracuse and Tarentum, from Corinth and Ambracia, and placed in the Roman temples, on public places, and in private houses. They were rare ornaments, prized because they were in fashion, because they were highly valued by connoisseurs in art, but certainly not because their new owners delighted in their artistic beauty or could even appreciate them.[1] If that had been the case, the Greek works of art

[1] Bernhardy, *Röm. Literat.* § 12: 'The daily contemplation of the great masterpieces of Greek sculpture produced very scanty results. To possess such works of art became indeed a passion of the great. But much was wanting from a true and genuine taste and appreciation of the elevated style of Greek plastic art.' *Ibid.* note 32: 'Greek art remained always merely decorative in Rome, whether it was employed to give splendour to the great public games or to ornament the great houses of the nobles.' 'In general the Romans, like all amateurs, delighted especially in such works of art as were remarkable for the skill of the execution, for truthfulness to nature, and for striking effects.' 'On the whole, therefore, the Romans have been merely preservers of works of ancient art; very few of them fully comprehended the

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would have touched the Roman soil like a living seed, and would have inspired enthusiasm and emulation. But nothing of the kind followed. The example of the old painter Fabius was not much imitated by his countrymen. Of course we cannot discover how far the Romans took part in the execution of works of art, and of all the ornamental objects which with the increase of wealth necessarily found a ready market in Rome. It is not impossible that here and there Romans had a share in their production and evinced taste and skill; but unless we have distinct grounds for attributing any such works to Roman design or execution, we are justified in believing that they were the productions of foreigners.

Roman architecture.

The sole exception in the arts is architecture. But even this was developed in Rome not so much in its artistic aspects as in its technical execution, *i.e.* in that department where the skill of the builder and not the art of the architect is called into operation. The application of the arch, the construction of sewers, aqueducts, bridges, and roads, everything relating to the technicalities of masonry and engineering, was carried out in a grand and splendid style, but the great models of Greece were not improved by the modifications which they experienced in Italy.

beauty of forms and the value of art for intellectual culture.' 'Except a few amateurs and pretentious enthusiasts, the Romans confined themselves to giving orders to artists, and were content to collect and preserve them for modern times.'

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CHAPTER XV.

THE CITY OF ROME DURING THE PUNIC WARS.

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Earliest Roman buildings.

We have but very scanty materials at our disposal to form an idea of the external appearance of the city of Rome at the time of the three wars with Carthage. Doubtless it was very different from the Rome of the Samnite wars. Only a few isolated monumental buildings still bore testimony to the proud and enterprising spirit of those men who laid the foundation of the eternal city. The old town walls, built in the time of the kings, were still standing, and the solid sewers which had for ages drained the forum and the adjacent low parts of the town. The wooden bridge, probably often renewed and repaired, and the bridges to the island in the Tiber, still sufficed for the daily traffic. Among a large number of temples and altars the most prominent were the Capitoline temple of the three chief deities, Jupiter, Juno, and Minerva, and upon the Aventine the temple of Diana, the federal sanctuary of the Romans and Latins; besides these the plebeian temple of Ceres on the same hill, and on the market the round temple of Vesta with the hearth of the united community. Next to this was the old royal palace (*regia*) which served since the beginning of the republic as the official residence of the supreme pontifex. The number of temples had increased so enormously in course of time that we can scarcely understand how space could be found for them in Rome. The greater part of them, however, we may fancy to have been buildings of modest appearance and small dimensions. In the same manner as they often owed their foundation to a whim of an individual, to a vow or a victory, it seems to have in many

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cases been dependent upon the caprice of individuals or families whether they should be kept up and repaired or allowed to fall into decay. Hence it happened that a large number of them were left in a half-ruinous condition, and as much neglected as some of the old national deities themselves.

Date of Roman public buildings.

It is by no means so easy as is generally supposed to ascertain at what time many of the Roman temples were built. In general we find that the annalists are anxious to ascribe their erection to as early a time as possible, in order to enhance the glory and nobility of the family that founded, built, or consecrated them.[1] If we bear in mind the Gallic destruction, we shall be much inclined to doubt the age of public buildings outside the capitol which were at a later time considered to be older than that period. It seems that, if not first erected after that famous conflagration, most of them must have been restored, so that they may be looked upon as newly built. One of these edifices is the Curia. Although it bears the name of Hostilia, which is meant to connect its construction with the third Roman king, it cannot have been the original building. For this building can scarcely have escaped the general devastation of Rome by the Gauls, unless the devastation was much less than has been represented. Of private houses, none of course dated from a time earlier than the Gallic invasion. They were most probably without exception very plain and modest, mostly built of wood, and therefore exposed to destruction in the conflagrations which so often raged in Rome. It was not before the conquests in the East that the Roman nobles began to cultivate a taste for private dwellings of a more imposing and substantial kind. On the whole the outward appearance of Rome in the second century B.C. must have been paltry and mean. But it gradually improved. The old wooden booths that lined the market-place on both sides, and had formerly served in part for

[1] On the temple of Apollo, see vol. i. p. 250, n. 2; on that of Bellona, vol. i. p. 561, n. 1.

butchers' stalls, were exchanged on the northern side for stone structures which became offices for money-changers.

Basilicas.

The appearance of the market was still more improved when in the year 185 B.C. Cato bought some of the booths, and built the first basilica (the basilica Porcia), to which subsequently two more basilicas were added, one (usually called the Æmilia) in the year 180 B.C. by the censors Æmilius and Fulvius, and another (the basilica Sempronia) in the year 170 B.C. by the censor Tiberius Sempronius Gracchus. These buildings, destined principally for mercantile transactions, were a kind of exchanges, but were also employed for other purposes, especially for judicial proceedings. The old forum, however, still remained in use for the transaction of public and legal business, and was still the centre of life in the town. The plebeian popular assemblies were likewise usually held there, and sometimes in the open space before the Capitoline temple of Jupiter. Lastly, the forum was used as an arena for gladiatorial fights.

Markets.

Besides the great forum there were market-places for special articles; a cattle market (*forum boarium*), a fish market (*forum piscatorium*), and a vegetable market (*forum olitorium*). We do not know whether these markets were sufficient for the wants of the town, but probably private shops of all sorts were scattered about the different quarters.

Sewers and aqueducts.

By means of the extensive sewers, which had been begun in the regal period, and repaired and enlarged during the republic,[1] the forum and the adjoining parts had been rendered dry and habitable. But the town was by no means safe from periodical inundations. On the contrary, Rome was exposed to great danger from floods every spring and autumn. Houses in the low parts were on such occasions undermined, and often fell.[2] The fre-

[1] Mommsen (*R. Gesch.* i. p. 808) is of opinion that probably most of what remains of the great sewers dates not from the regal period, but from repairs made subsequently.

[2] Liv. xxxv. 9, 2. Orosius, iv. 11.

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quent inundations must have contributed to make Rome unhealthy,[1] so that devastating plagues were a common occurrence, and not enough temples could be erected to the healing gods. These temples may have satisfied the superstitious feelings of the people, but far more beneficial were the grand aqueducts, three of which had been built before the year 146 B.C., the first by Appius Claudius 312 B.C. It is very doubtful if much was done for the cleaning of the streets, in spite of the exertions of the ædiles.[2] Besides, the pavement may also have been very imperfect in many streets.[3]

Campus Martius.

Rome was not yet rich in public places, gardens, and walks. But this defect was perhaps compensated by open spaces within the walls, as it is not likely that all parts of the ground covered by the city were as yet thickly built upon. One large open space was the field of Mars between the hills and the Tiber. The town spread but slowly over these parts. It was not until C. Flaminius had erected a circus on the neighbouring Flaminian fields that temples and other buildings were gradually erected in the space to which modern Rome has now moved away from the hills.

Decoration of the city.

If on the whole the external appearance of Rome before the erection of the grand imperial buildings, the fora, baths, palaces, theatres, and amphitheatres, could not be very imposing, care was at least taken that on festive occasions it should be richly decorated. For triumphal entries the route taken by the procession along the

[1] Cicero, *De Rep.* ii. 6. Liv. vii. 38, 7.

[2] Above, p. 144.

[3] The little use made of vehicles explains the fact that so little attention was paid to the paving of the streets. The first proper pavement, as far as we know, was laid down in 174 B.C. Liv. xli. 27, 5. The material for paving the streets was *silex*. Cato proposed that the forum also should be paved (Plin. xix. 2, 24), but with *murices*, sharp, pointed stones, so that idlers might find it unpleasant to loiter there. We are not informed whether before the year 174 B.C. there was any sort of pavement in Rome. Fifteen years before that time the paving of the via Appia with *silex* is mentioned, Liv. xxxviii. 28, 3; but the distance (*a porta Capena ad Martis*) was very short, only about 1,000 paces. This part of the road had as early as 296 B.C. been provided with a flagged footpath (*semita*). Liv. x. 23, 12.

sacred street (*via sacra*) was hung with silver-plated shields and other ornaments. The pillars of the temples were frequently covered with trophies. At all times the forum and the capitol were crowded with statues which the state had erected to meritorious citizens, or which owed their existence to the family pride of Roman nobles. The latter had by degrees become so numerous that the censors of the year 158 B.C. caused all statues to be removed, except those that had been ordered on public authority.[1]

Statues.

It may not have been easy to distinguish these two classes of monuments. The Romans were never very curious in scrutinising the genuineness of historical monuments. With a ready faith the mass of the people accepted the interpretation which was put upon them by the most barefaced vanity of family chroniclers.[2] The morbid fondness for relics of antiquity was perhaps more prevalent in Rome than in any other place or time, excepting, of course, those ages in which the superstitious adoration of holy relics was a part of religion. If the Ruminal fig-tree, the cottage of Romulus, the statue of Servius, and similar things were shown, and believed by every Roman to be genuine, we have ample reason to doubt the authenticity of many alleged monuments and statues of the old times. All that was calculated to exalt noble families is particularly suspicious. The vanity of family chroniclers did not shrink even from forgery. Inventions which had been inserted, perhaps timidly at first, in the inscriptions of the ancestral room of the house, or in the family traditions, were by degrees given out with a bold front as undoubted historical records.[3] From the beginning of the Punic wars the pride and am-

[1] Plin. *Hist. Nat.* xxxiv. 6, 30. Aur. Victor, 44. Mommsen, *Röm. Staatsr.* I. i. p. 417.

[2] A good illustration of this credulity is the equestrian statue erected in the Via Sacra to Cœlia, one of the hostages given up to Porsenna (vol. i. p. 88. Liv. ii. 13). The same statue was supposed by others to represent Valeria, a daughter of P. Valerius Poplicola. Plin. *Hist. Nat.* xxxiv. 13.

[3] Vol. ii. p. 43, n. 4.

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bition of the great families increased still more rapidly and prodigiously. Most of the monuments intended for their glorification at a later time were probably erected during this period, and thus the external appearance of the town plainly bore evidence of the change of the constitution into an oligarchy. To trace this gradual transformation of the republic is the task that now presents itself to our consideration.

CHAPTER XVI.

INTERNAL HISTORY FROM THE HORTENSIAN LAWS TO THE TIME OF THE GRACCHI.

Position of the Roman allies.

At the commencement of the republic the patricians were in possession of the whole power of the state, to the exclusion of the plebeians. For a long time the struggles of the latter to obtain fair and equal laws, a share in the government, and at last full equality with the old nobility, form the substance of the constitutional history of Rome. The final result of these struggles was the abolition of the privileges of the patrician order and the establishment of a constitution which seemed to exclude the chance of further dissensions. The Roman commonwealth, thus enjoying internal peace and unity, quickly rose to be the dominant state in Italy, and to incorporate its various races in the form of a confederation. Romans and allies now stood in a relation to one another similar to that of the patricians to the plebeians; the former furnished with the full rights of citizenship, and exclusively entitled to all honours, rights, and privileges of the state; the latter, as subjects, compelled to bear the burdens of the state, yet excluded from a share in the government. The glaring injustice of the unnatural rule of one town over great tracts of land did not lead to a reformation of the original constitution, which was suited only for a country of smaller dimensions, and the undue prolongation of this state of affairs necessarily brought about a revolution, which at last burst the antiquated form of the constitution, and made room for a new order of things.

With the Hortensian laws, 287 B.C.,[1] the democracy

[1] Vol. i. p. 447.

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seemed to be completed. In form it was so indeed. The legislative power, free from all restrictions, was in the hands of the people, and every citizen had an equal share of the privileges and honours as well as of the obligation to serve the state. But the letter and the spirit of the constitution were even then not quite in accordance with each other, and in course of time the contrast between them became more glaring. In spite of the theoretic equality of rights, the actual influence of the common plebeian sank lower and lower, and the importance of the families who by nobility and wealth were qualified to govern the state rose in proportion. Even in former times, when the old patricians were legally all on a level with one another, certain families only had been *de facto* in the possession of power.[1] As the state increased in size, the business of government became more complicated and more difficult, and a class of people was necessarily wanted who could devote themselves professionally to the service of the state, excluding those citizens whose time was occupied with daily toil in trades or agriculture. Thus was formed the nobility or new aristocracy of office, which gradually succeeded in monopolising all the high public offices, and in obtaining complete control of the government, without almost the shadow of an opposition, for about one hundred and fifty years, from the Hortensian laws to the Gracchi.

Aggrandisement of the great Roman houses.

The new aristocracy, feeling secure in the undisputed possession of power, was naturally disinclined to constitutional reforms. By the course of events they were placed in a condition to indulge their conservative principles. The uninterrupted wars which kept the people in constant excitement, and all of which ended with great conquests and advantages for the Roman state, had precisely the opposite effect to that which unfortunate wars usually

Minor reforms.

[1] Though we do not know what was the numerical strength of the old patrician population, or the number of patrician gentes and families, it is clear enough from the Fasti that only a small proportion of them were admitted to the high offices of state, and that the great majority were then as much excluded from the chance of office as were in later times those who did not belong to the nobility.

have.[1] Instead of leading to reforms, they seemed only to prove the excellence of the existing institutions the results of which were so satisfactory. All that was done in the way of legislation therefore was limited to improving the old constitution in some subordinate points of detail, and to completing the existing laws, both public and private. The number of republican offices was increased,[2] re-election to the censorship was forbidden,[3] a law was passed to restrain a man from becoming a candidate to the tribuneship during the lifetime of his father, if the father had held a curule office,[4] the election of the legionary tribunes by the people was regulated,[5] rules were laid down fixing the age at which the different offices of state should be held,[6] lastly, laws were enacted for the restriction of extravagance in dress and living, and to secure public order.[7] The law which Cato succeeded in passing, probably during his consulship, for the purpose of limiting and controlling the excessive demands which the provincial governors were in the habit of making on the people under their authority, was an honest but ineffectual attempt to abolish an inveterate evil, not only ruinous to the subjects of Rome, but dangerous to the republican constitution itself. The same Cato passed a law to re-enact and most probably to extend the provisions of the old Valerian laws, given at the very commencement of the republic for the security of Roman citizens from any excessive severity of magistrates. There were three Porcian laws,[8] devoted to the same object and passed at

[1] It may be recognised as a general rule that disastrous wars lead to internal reforms, or at least to attempts at reforms. This is amply proved by ancient and modern history. See, with respect to Carthage, vol. ii. p. 143.

[2] The number of quæstors to eight; that of prætors first to two, then to four, finally to six. Above, p. 120.

[3] Plut. *Coriol.* i.

[4] Liv. xlix. 19, 9.

[5] Mommsen, *Röm. Staatsr.* ii. 1, p. 540.

[6] Lex Villia annalis in 180 B.C.

[7] Lex Claudia, 219 B.C.; Lex Oppia, 215 B.C.; Lex Cincia, 204 B.C.; Lex Orchia, 181 B.C.; Lex Fannia, 161 B.C.; Lex Didia, 148 B.C.

[8] Cicero, *De Rep.* ii. 31, 54: Neque leges Porciæ, quæ tres sunt trium Porciorum, ut scitis, quidquam præter sanctionem attulerunt novi. Liv. x. 9,

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different times by members of the same family. But they introduced no new principle of rights. Their object was to secure and guarantee the old privileges of Roman citizens and to introduce only such modifications as the altered times required.

The Ælian and Fufian laws.

Of far greater importance, and an indication of what threatened the democracy, were the Ælian and Fufian laws (*leges Ælia* and *Fufia*), the age of which unfortunately we cannot accurately determine.[1] They enacted that a popular assembly might be dissolved, or, in other words, the acceptance of any proposed law prevented, if a magistrate announced to the president of the assembly that it was his intention to choose the same time for watching the heavens. Such an announcement (*obnuntiatio*) was held to be a sufficient cause for interrupting an assembly, not less than the actual appearance of unfavourable signs. This law, although assuming to be of a general character, was specially directed against the tribunes of the people, and was destined to prevent them from calling the people together for the purpose of passing laws which had not met with the approval of the government, *i.e.* of the senate and the higher magistrates. It was, therefore, to a certain extent, a restoration of the veto which had been contained in the *patrum auctoritas*, and which had long been abolished.[2] Cicero was delighted with this law; he calls it the safest protection from demagogic disturbances, a fort and bulwark for the rest and peace of the state.[3] This is easily explained; for as long

3: Eodem anno [300 B.C.] M. Valerius consul de provocatione legem tulit diligentius sanctam. Tertio ea tum post reges exactos lata est, semper a familia eadem. Causam renovandæ sæpius haud aliam fuisse reor, quam quod plus paucorum opes quam libertas plebis poterant. Porcia tamen lex sola pro tergo civium lata videtur, quod gravi pœna, si quis verberasset necassetve civem Romanum, sanxit. Valeria lex cum eum qui provocasset virgis cædi securique necari vetuisset, si quis adversus ea fecisset, nihil ultra quam 'improbe factum' adiecit.

[1] On this law see Lange, *Röm. Alterth.* ii. p. 447. [2] Vol. i. p. 371.

[3] Cicero, *P. Red. in Sen.* 5, 11: Subsidia certissima contra tribunicios furores. *In Pisonem*, 4, 9: Propugnacula murique tranquillitatis et otii. *In Vatin.* 7, 18: Lex Ælia et Fufia quæ leges sæpenumero tribunicios furores debilitarunt et represserunt.

as such a law was in force, the nobility were free from anxiety. Every attempt of a quarrelsome, revolutionary spirit could be nipped in the bud. But it is matter of surprise that the machinery which the Ælian and Fufian laws set in motion was not found to be rusty and out of gear in the second century before our era. The 'obnuntiatio,' one would think, would be of no use and effect in an age which no longer respected the old religious scruples. In the older times, when religion still held the minds of the people in awe, it was not used openly as a political weapon, but only occasionally employed to assist in gaining political ends, whereas now, in the age of universal scepticism, a rule was made, according to which, under the pretext of religious objections, the governing party could pursue purely political motives. It is not probable that the nobility were often in a position to make use of the weapon offered them in the shape of the Ælian and Fufian laws. We should certainly have been informed of it, and moreover the inevitable result would have been what took place in Cicero's time, namely that the weapon which had received too keen an edge would soon have become blunt. There was, moreover, hardly ever occasion for it up to the time of the Gracchi. If, therefore, it took any effect before this time, it was probably as a warning, or against agitators who were too insignificant to obtain for themselves the honour of a name in the annals.

Gradual changes in constitutional practice.

Whilst formal legislation did but little to alter the fundamental outlines of the constitution, a gradual change was nevertheless effected by the imperceptible influence of progressive national life. That the existing laws and constitutional practices should be gradually accommodated to the wants of a larger state, of a spreading dominion and of the uncontested rule of the nobility, was inevitable. Among these silent changes is to be reckoned the gradual disappearance of the dictatorship.[1] The power of these magistrates too nearly resembled that of a king to be looked upon favourably by the aristocracy. In spite of the

[1] Above, p. 85.

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unceasing wars, therefore, which frequently made it appear necessary to unite the various branches of the administration in the hands of one man, the dictatorship by which this object could have been easily obtained was allowed to drop.

Extension of military commands beyond the term of office.

A danger to the constitution greater than that of the dictatorship might justly be apprehended from the military commands extended beyond the year of office. These extensions or prorogations, however, could not like the dictatorship be dispensed with. The great and constantly increasing distances from Rome at which war had to be carried on, the difficulty of successfully prosecuting the military undertakings of one general by a second or third successor to the command, often caused the danger to be overlooked with which official power resting long in the hands of the same person necessarily threatened the republic. Thus it happened that, especially in the Hannibalic war, the Scipios, Marcellus, and Valerius Lævinus held commands for lengthened periods. But after the conclusion of that war, the opposite practice seems to have been pursued in Spain, Liguria, and in the East, not for the benefit of the military operations, but at least in the interest of the nobility, who, in spite of occasional difficulties with refractory generals, managed on the whole to maintain the authority of the senate over single families, and that of the civil over the military power.

Origin of the Social war.

The most important reformatory movements of the entire period were effected without acts of formal legislation, merely by the official practice of the executive magistrates. These magistrates, acting of course not as independent legislators, but with the consent and sanction of the senate, or rather by order of the senate, and with the subsequent approval of the people expressed or implied, introduced reforms of great weight and importance, simply by adopting new rules in the administration of their respective departments. This was the case especially in the periodical recasting of the list of citizens by the censors. We have already seen that we must ascribe to the latter

the reforms in the constitution of centuries as well as in the assemblies of tribes.[1] All these innovations must be looked upon not as measures resolved upon by the censors upon their own responsibility, but as reforms maturely considered in the senate, adopted by the majority in that body, shaped so as to suit the circumstances of the time, and finally confirmed and consecrated by the solemn religious ceremony of the 'lustrum' which gave them the sanction of the gods. To organize the body of citizens in their tribes and classes was the most important of all measures of reform. The two great parties which had at all times divided the state, though sometimes their enmity seemed interrupted by long periods of truce, came at last into direct collision, when the reception of the whole of Italy into the body of Roman citizens could no longer be postponed. The question could not be settled by discussion and compromise. The passions of both parties were roused, and the Social war, the most terrible of all that ever visited Italy, determined the last reform of the comitia tributa, by opening the thirty-five Roman tribes to all the Italian allies.

Growing power of the senate.

Private like public law was developed not so much by means of formal legislation as by the magistrates, who with the approval of the senate and the people, the two principal factors of public life, issued the so-called prætorian edicts or rules of law by which they declared that they would be guided in their decisions.[2] All the changes thus effected in the principles and practices of the constitution were made in one direction; they tended to increase the power and the authority of the senate as the organ of the nobility. Whilst the co-operation of the people, which was theoretically indispensable, sank steadily to a mere formality, the actual decisions in all important questions were more and more left to the senate, which from a merely deliberating and consulting body thus became practically supreme.[3] But the senate was in point of fact only a committee of the nobility. The rule of the

[1] Above, pp. 17, 35 ff. [2] Above, p. 121. [3] Above, chap. ii.

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senate was the same thing as the rule of the nobility, and it was omnipotent as long as individual members of the aristocracy placed themselves at its service. When in the following period a defection took place, when the Gracchi and their adherents sought the salvation of the Roman state in a policy differing from that which the senate had hitherto adopted, and failed to convert the senate to their opinion, they were compelled to take their position on the popular rights, and to combat the senate with weapons which, though legal at one time, had now been practically laid aside, and were no longer acknowledged as legitimate. These attempts, therefore, might lead to passing triumphs, but not to a decided and permanent victory.

Political services of the Roman nobility.

The predominance of the nobility in the senate is, therefore, the characteristic feature of the time. It increased with the growth of the state and reached its culminating point after the Hannibalic war.[1] The Roman republic owed to it glory, power, and dominion, and though it was far from faultless, we must confess that it performed what under the same circumstances no other form of government could have performed. In the whole history of the world the Roman aristocracy never has had its equal.[2] The Roman nobles, not scattered over a large surface, but living together in one locality and associated as members of one assembly, appear almost like one family, governing the state through one great family council. The

[1] Sallust, *Jugurtha*, 41, 7: Paucorum arbitrio belli domique agitabatur: penes eosdem ærarium, provinciæ, magistratus, gloriæ triumphique erant: populus militia atque inopia urgebatur: prædas bellicas imperatores cum paucis diripiebant.

[2] Comp. Mommsen, *Röm. Gesch.* i. p. 892, n. Perhaps the best representative of a noble Roman family was Q. Cæcilius Metellus, of whose funeral Pliny, *Hist. Nat.* vii. 45, relates: Præter honores amplissimos cognomenque a Macedonia a quatuor filiis illatus rogo, uno prætorio, tribus consularibus, duobus triumphalibus, uno censorio. Comp. Vellei. Pat. ii. 11: Ut paullo ante Domitiæ familiæ ita Cæciliæ notanda claritudo est; quippe intra duodecim ferme annos huius temporis consules fuere Metelli, aut censores aut triumpharunt amplius duodecies. Well might the honest poet Nævius say the Metelli were predestined by fate to become consuls. Is there in all modern history a noble family which in one generation has seen so many of its members fill the highest offices of state?

traditions inherited from their ancestors, their maxims, habits, and routine of administration, had a stability, a decision and consistency, which remained firm and unshaken under the heaviest blows. 'Never to despair of themselves' was the maxim of these men, and this determination was no contemptible substitute for genius which they did not possess. If individual members of this nobility made no very imposing figures, but disappeared in the mass, that mass was on the other hand throughout pervaded with patriotic sentiments and with an average ability, which to gain great objects could dispense with individual greatness.

Political training of the Roman nobles.

For every Roman the first duty was to serve his country; but with the nobility this service demanded the whole of a man's life, to the exclusion of almost every other claim. Even before the Claudian law had decreed that the members of the senatorial families should take no part in trade and navigation for the sake of gain, it had been the custom for them to restrict themselves to agriculture and the service of the state. They were, therefore, well qualified to be the cultivators and teachers of political wisdom. Their youth was an apprenticeship to public business, first in their paternal house, where they heard what their fathers, their elder brothers, and relations thought on pending questions; then in the field, where they had a privileged position in the military suite of the commanders, and could practically study the art of war; afterwards in the lower magistracies, beginning with the quæstorship which brought them into constant business relations with the consuls, and prepared them for the higher offices. They found the road which led from one step in official life to another made easy for them, and were burning one and all with the desire to reach the highest round of the ladder, to add new consular dignity to their houses, and finally to spend their mature age in the service of their country as members of that august body which ruled the destinies of the empire.

Every ruling nobility draws a line of demarcation

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Exclusiveness of the Roman nobility.

between itself and the rest of the people. The Roman nobility watched most anxiously that no one should be received from outside without a good claim for admission, although no 'golden book,' as in Venice, registered the names of the noble families, and was irrevocably closed to all new comers. On the contrary, every Roman who obtained a high public office through the confidence of his fellow-citizens was thereby received into the privileged body. But how small was the number of those who thus rose from the mass! Flaminius, Varro, Glabrio, Lælius, and Cato, were the only eminent names added to the aristocracy since the war with Pyrrhus. In this more than in anything else the real insignificance of the popular elections becomes evident. For even these men rose to their dignities not through merit alone or by recommending themselves directly to the people, but through the patronage of old aristocratic families; Cato, for instance, through that of the Valerii, Lælius and Glabrio through that of the Scipios.

Shortsightedness of this policy.

The jealousy with which the Roman nobility tried to keep off intruders was a great political error and turned out to be an element of weakness. By a general law of nature no close society or class which keeps off the influx of new blood can flourish or even continue to exist. Experience shows, moreover, that new members admitted into a privileged class are generally the most zealous champions of the special privileges of that class to which they have gained admission. Nothing would be a greater mistake than to look upon Cato as an enemy of the aristocratic rule. On the contrary, his whole policy tended to preserve things as they were, and if possible to restore and to revive what was past and lost, the ideal to which a true nobility of birth always clings. Men less narrow-minded than Cato, but equally firm and ready to be her champions, would have vied to swell the ranks of the nobility, if the latter had not blindly mistaken their own interests and excluded them.

But the true interest of the republic would have re-

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quired still more than the liberal admission of Roman commoners to the ruling class. In the Punic wars the time had come when the same reform ought to have taken place with regard to the allies which more than a hundred years before had admitted the most eminent plebeian families to the nobility. During the Hannibalic war, when the Romans had learnt to value the importance of the Italian allies, the proposal was made by Spurius Carvilius, a farsighted statesman, and a moderate reformer like C. Flaminius, to receive into the senate two representatives from every Latin colony.[1] If this proposal had been accepted, it would have been the beginning of a kind of representative constitution, which might possibly have preserved the Roman state in its republican form, and have averted the terrible sufferings of the Social war. But in this matter the Roman nobility were blind. They could not consent to share with their subjects the dominion of the state, and what, no doubt, they valued still higher, the material advantages of that dominion.

Proposal of Spurius Carvilius for a representation of the allies in the senate.

For it cannot be denied that the patriotism displayed by this Roman nobility was closely allied with a coarse selfishness. They never scrupled to abuse their political position for their own personal interests. How did the noble families obtain the enormous wealth that raised them so high above the mass, although the ordinary means for acquiring riches were forbidden to them? Evidently they availed themselves of the opportunities offered them by the possession of power in peace and in war, by the privilege of disposing of booty, of conquered territories, of subjected or allied towns and peoples.[2] On every page of the Roman annals we can read that the nobility with reckless effrontery appropriated public property to their own use. It is reported of a few men, and as a rare virtue, that they did not think of their own profit.[3] Most of them, we

Selfishness and pride of the nobility.

[1] Vol. ii. p. 287.

[2] See the passage quoted from Sallust, p. 312: Prædas bellicas cum paucis diripiebant.

[3] Of Scipio Æmilianus it is reported by Livy, epit. 57: Scipio amplissima munera missa sibi ab Antiocho, rege Syriæ, quum celare aliis imperatoribus

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can take for granted, did not forget themselves when they distributed the booty among the soldiers, centurions, and horsemen. We should like to know to what proportion they thought themselves entitled when they allotted to the centurion twice and to the horseman three times the share of the legionary soldier. Nothing preoccupied a Roman's attention more than the care for the increase of his property; and as, even in the good old time, we hear that acts of dishonesty and peculation are unhesitatingly ascribed to the foremost men, so these charges increase during the time with which we are better acquainted to such an extent that men above suspicion, like Cato, appear to have been the rarest exceptions.

Modes of winning popular favour.

The wealth accumulated by plundering the enemies, the subjects, and the state itself, was partly employed as a political capital to obtain new posts of honour for the family, partly to live in the style required by the fashion of the day. The former end was gained by a splendid liberality shown in the exhibition of public games, which had become more and more indispensable for courting the favour of the people. Year after year the magnificence of the chariot races, gladiatorial combats, wild beast hunts, and dramatic representations increased. Whoever offered the newest, the most striking, and the most abundant amusements became the favourite of the people and could reckon upon their gratitude. The same object was gained by shows connected with triumphal processions. These were not only spectacles for the curious, and not only an expression of joy at national victories, but they served more especially to exalt the triumphator before the people, to flatter his vanity and that of his family, and to mark him as a great man. The eagerness with which Roman statesmen longed for the distinction of a triumph became an uncontrollable passion. Whoever had a shadow of a

regum munera mos esset, pro tribunali accepturum se dixit, omniaque ea referre quæstorem in publicas tabulas iussit, ex iis se viris fortibus dona daturum.

pretension to such an honour importuned the senate with his claims, laboured to place his exploits in the most favourable light, to extol and exaggerate his successes, and never rested until either by his own influence or that of his friends he had obtained permission to celebrate a triumph, or at least an ovation. The most violent disputes would arise if any personal opponent questioned such claims, and sought to show that the alleged successes were imaginary or too insignificant, or even that they were altogether fictitious.[1] If the pretensions of a claimant were too palpably based upon mendacious reports, and if the senate could not with decency allow them, it sometimes happened that the disappointed generals marched in triumph[2] up the Alban mount, where they were beyond the control of the civil government, and could indulge their vanity in the exercise of their military imperium. At length the senate endeavoured to guard against unsubstantial claims by resolving that a triumph should not be accorded to any commander who had not slain at least five thousand enemies. The only result of this restriction was that the mendacious reports were swelled to the required proportion.

Memorial monuments.

Next to triumphal processions the Roman nobles indulged their love of self-glorification on days of solemn thanksgivings decreed by the senate. These days served, in reality, not a religious purpose, but the most vulgar personal vanity. The same must be said of temples which generals vowed in time of danger, and afterwards built, partly at their own and partly at the public expense, as a

[1] Liv. xxxviii. 47, 5: Triumphavit Q. Fabius Labeo, quem hostem omnino non vidisse inimici iactabant. Liv. xl. 59, 1: Alter consulum Q. Fulvius ex Liguribus triumphavit, quem triumphum magis gratiæ quam rerum gestarum magnitudini datum constabat.

[2] Appius Claudius, the consul of 143 B.C., went further. He celebrated a triumph in the town itself, in spite of the opposition of the senate and their refusal to allow the expenses. He braved even the intercession of the tribunes, who were going to pull him off the triumphal chariot, by clinging to his daughter, who was a Vestal virgin, and whom the tribunes dared not to touch. See vol. iii. p. 424.

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standing proof of the victories which they declared that they had gained.[1] To see the name of one's family commemorated on public buildings, in streets, aqueducts, halls, basilicas, temples, and theatres, was the great desire of every man who could hope to attain to the high offices of state. Whoever failed in this object sought at least to erect a statue or a portrait somewhere in honour of an ancestor, if not of himself.[2] The Roman forum and the places round the temples gradually became crowded with monuments of this sort,[3] so that the censors were repeatedly obliged to interfere and to remove all monuments erected without public authority.[4] This morbid vanity was fostered by the custom of striking family coins, of naming laws after those who had proposed them, and of calling the years by the names of the consuls. In the time of Scipio the elder a new practice sprang up, that of honouring victorious generals by adding the name of the conquered country to that of their family. The name of Africanus is the first in this list, but it was soon discovered that with a little ingenuity men of the earlier period who happened to have a geographical surname, such as Fidenas or Coriolanus, could be passed off as conquerors of the respective places.[5]

Whilst the family pride of the nobility was thus puffed up with historical documents, the funeral orations (*lau-*

[1] This is illustrated, among other examples, by that of M. Æmilius Lepidus, a man of the highest nobility, who was twice consul, and moreover censor and pontifex maximus, and six times in succession princeps senatus. In a campaign against the Ligurians (187 B.C.) he had met with so slender success that he could not venture to ask for the honour of a triumph or a day of thanksgiving (a *supplicatio*). Nevertheless he had vowed two temples, one to Diana and the other to Juno Regina (Liv. xxxix. 2, 9), which he dedicated eight years later (Liv. xl. 52, 1).

[2] Manius Acilius Glabrio, the conqueror of Antiochus in the battle of Thermopylæ, had vowed a temple to Pietas. This temple was dedicated in 181 B.C. by Glabrio's son, on which occasion a gilt statue of him was erected, the first of that kind that was seen in Rome, representing not a deity but a man. (Liv. xl. 34, 5.) Compare the boasting tablet erected (174 B.C.) in his own honour by Tiberius Gracchus in the temple of the Mater Matuta. Liv. xli. 28, 8.

[3] Vol. iii. p. 354, n. 2.

[4] Above, vol. iii. p. 426.

[5] Vol. ii. p. 43, n. 4.

dationes) and family chronicles formed the beginning of an historical literature. This literature plainly bears the stamp of its origin. The annals of Fabius and his successors could never have been written if the different families had not formed almost independent communities within the commonwealth. They made the history of a family the central portion of their narratives, and filled up their pictures with secondary characters and a general background of national events. Thus the greatness of the Roman aristocracy, which characterises the whole internal and foreign policy of the republic, has impressed its peculiar stamp on the national annals. As the history of despotic countries is to a great extent the personal narrative of the doings of the successive despots, so the history of Rome is the sum total and the working up into one connected story of the chronicles which recorded the exploits of the great families.

Records of Roman patrician families.

The literary taste of the Roman nobles had an exclusively practical tendency. They liked to dwell on social, historical, and political questions, and turned away from all mere creations of the imaginative faculties. Poetical fiction was contemptuously left to foreign slaves or to freedmen. A Roman statesman, it was felt, should devote himself only to those branches of literature which dealt with public affairs upon which the greatness of his family was founded, such as national history and law. Whoever took pleasure in light literature, especially that of Greece, was looked down upon by the representatives of the genuine Roman spirit as an apostate, and his name was pronounced with some degree of contempt.

Roman notions of literature.

In spite of this antipathy the influence of Greek taste became steadily greater, especially because it served as an instrument to amuse the people in the public games and to adorn the houses of the great. Although the Romans had not taste enough to understand fully and to appreciate the great productions of Greek artists, it was nevertheless thought necessary in fashionable circles to place celebrated marble statues in houses and gardens, and to

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be acquainted, at least to a certain extent, with Greek art and literature. This irresistible influence of the Greek intellect is most distinctly manifest in the life of Cato, who, although he always prided himself on being the champion of genuine Roman virtues and principles, and although he ostentatiously professed supreme contempt for everything foreign, nevertheless diligently studied the Greek authors and tried to make use of them in his own writings and conversation.

Personal distinctions of the senators.

It was not only the position which the nobility occupied in the state, together with their wealth and their inclination to adopt the Greek standard in literature and art, that distinguished them from the mass of the people as a higher class of citizens. Their exalted rank was indicated and was unmistakably impressed upon the vulgar mind in all the transactions of everyday life by a peculiar dress which only men of senatorial dignity were allowed to wear. The broad purple stripe of the senatorial garment and the red shoes had always marked the ruling men among the mass of people in the streets and markets; but it was not until the year 194 B.C., in the second consulship of Scipio Africanus, that particular seats were reserved for the senators in the representations of dramatic plays, so that in these solemn assemblies they were clearly marked as privileged men separated from the mass of the people. It is surely a proof of the acknowledged dominion of the senate that such an innovation, which directly offended the republican feeling of equality, could be introduced by a mere decree of the censors, and moreover introduced so effectually that we do not hear of any later attempt to set it aside. Even Cato, whose censorship followed immediately after that of Scipio, did not interfere with it, and probably he was far from finding fault with the proceedings of his predecessor in office, which he could not help regarding as the natural public recognition of the position of the senate as the actual ruler of the state.

During the whole of this time we hear nothing of any opposition to the government resulting from difference of

political principles.[1] All the disputes that occurred were simply personal quarrels.[2] The great questions which annually agitated the community were, whether a Fulvius or a Cornelius was to be consul, or prætor, or ædile, or censor. There was plenty of animosity and intrigue, but no great constitutional question was ever touched.[3]

Absence of civil discord.

The power exercised by the nobility over the state reached its highest point in the domineering position of the Scipionic family. The most important questions of internal as well as foreign policy turn upon the rivalries of this family with a few opponents, such as Flamininus and Cato. But no political principle can be discovered in this opposition. Cato's hostility to the Scipios was by no

Aggrandisement of the Scipionic family.

[1] Sallust, *Hist.* i. 8: Maxima concordia egit populus Romanus inter secundum ac postremum bellum Carthaginiense. *Ib.* i. 9: Discordiarum et certaminum utrimque finis fuit secundum bellum Punicum. There was all this time no such thing in Rome as a reform party. Mommsen himself, who often speaks of such a party (*Röm. Gesch.* i. 828) without seeming to entertain a doubt of it, is yet led to admit (p. 833) that we 'fail to discover by what high political aim it was led.' And again, vol. ii. pp. 72, 74, he comes to the same conclusion.

[2] The rivalries, disputes, intrigues, related by Livy are so frequent that quotation is unnecessary. As a notable instance may be mentioned the personal quarrel between the senate and the consul Popillius, 173 B.C., related by Livy, xlii. 7–10. See vol. iii. p. 262.

[3] One sign of the absence of parties opposed to each other on fundamental questions is the great number of rival candidates for election. When a country is deeply agitated by great constitutional questions, all minor differences are merged, and only two parties confront each other, each of them putting forth its best champions. When one party becomes dominant, and ceases to apprehend serious opposition, personal ambition finds a pretext in small matters for opposing rival candidates of the same party. Thus we find instances of election contests in Rome when no principle was at stake, as Liv. xxx. 7, 2; xxxv. 10; xxxv. 24, 4; xxxvii. 47, 6; xxviii. 57, 9; xxxix. 32, 5; xxxix. 39, 1; xli. 28, 4; xliii. 14, 1. To illustrate what paltry matters often set men of the same party against each other, we will refer to the enmity between the censors of 179 B.C., Æmilius and Fulvius. Their personal animosity against one another was notorious. When therefore, in spite of this animosity, they had been elected to the same office, the leaders of the senate used their eloquence and influence to induce them to compose their quarrel, at least so far as was required by the duties of the office in which they were colleagues. What had set these men against each other? It was no political difference of any sort. Æmilius had been twice thwarted by Fulvius when he was a candidate for the consulship; in revenge he had opposed him unfairly, and had tried to deprive him of the honour of a triumph. Liv. xxxix. 4, 3; xl. 45 f.

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means directed against the cause that they defended, but against the measures which they adopted on every opportunity to increase their influence. Cato was just as much an aristocrat and a thorough Roman as Scipio the Elder and Scipio the Younger; and if Flamininus was a friend of the Greeks, as has been so often and so loudly proclaimed, Cato has a right to be called so too.

Political power of the Scipios.

The domestic power of the Scipios contained in it the first real danger for the maintenance of the republic. During the Hannibalic war they exercised a kind of hereditary monarchical power in Spain, and decidedly stood out as distinct from the great number of other noble families. In the general bearing of the Elder Scipio, especially in his relation to the senate, we can perceive a self-esteem, pride, and contempt of the law that characterise the born ruler. For fifteen years in succession he held the most honourable post that a Roman, without being a magistrate, could hold—namely, that of foreman of the senate (*princeps senatus*). He seemed destined to be a king, and he might have become one had he not lived too early. But we may reasonably doubt whether, in spite of his ambition, the idea ever occurred to him that it might be possible to overthrow the republican order of things. Such ideas ripen but slowly in a state which has gone through a natural development. It can take root only on the ruins of a worn-out and overthrown constitution.[1] But during the Hannibalic war Rome was still in a healthy condition. A statesman attempting to assume monarchical power would have been considered and treated as a madman. Apart from this, Scipio was convinced that the aristocratic form of government was the best, and therefore, even had he been able to rule Rome as a sovereign, he would have disdained to act as demagogue, by which means alone he

[1] Even at the present time, when monarchical government is the rule in Europe, the idea of establishing it in republican Switzerland or republican America cannot enter into the head of a sane politician of those states. In Rome it was still less likely at a time when the monarchies with which the republic was practically acquainted were either barbarous countries like Numidia, or the effete remnants of Alexander's empire.

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could have obtained this end. He contented himself with occupying a high position as the greatest among the great men in the republic, with impressing[1] his own will and conviction upon the government, with exacting homage and flattery from ordinary politicians, and considering himself better than every one else.[2] This was naturally not the way to remain in the high position which he had gained through the great victory over Hannibal. After the peace with Carthage Scipio almost disappeared from the scene of action. His talent for political controversy was not to be compared with his military ability.[3] When, ten years after his first consulship, he applied for a second, he gained his election, it is true, but he could not obtain an employment in which he might have upheld his reputation as the first general of his time. Although a war with Antiochus was impending, and Scipio's old antagonist Hannibal, now in the service of Antiochus, had again to be encountered, the senate ordered the consuls of the year to undertake the administration of Italy, and Scipio, himself condemned to inactivity, had the vexation of witnessing the triumph of his two principal political opponents, that of Cato over Spain and that of Flamininus over Macedonia. The establishment of some colonies and the religious celebration of a 'sacred spring'[4] were not tasks to satisfy the ambition of a Scipio.

Opposition shown to the Scipios.

When his second consulship had passed without being marked by any memorable event, Scipio endeavoured to procure the consulship for the year 192 B.C. for his cousin Publius Scipio, and for C. Lælius, a client of his family, but he had the mortification of being worsted by his oppo-

[1] According to Livy (xxxviii. 54, 6), the friends of liberty complained of the '*regnum in senatu Scipionum.*' Seneca, who, we must not forget, was taught by history what Scipio's contemporaries did not know, expressed his opinion of the monarchical tendency of Scipio's policy thus: Aut Scipio Romæ deesse debebat, aut Roma sine libertate. Seneca, *Epist.* xiii. 1, 1.

[2] Liv. xxxviii. 52, 2. Gellius (iv. 18) calls him 'altus animo atque magnificus et sui conscientia subnixus,' and he ascribes to him 'fiducia atque exsuperantia ingens.'

[3] Livy, xxxviii. 53, 9, calls him: bellicis quam pacis artibus memorabilior.

[4] Liv. xxxiv. 43.

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nents. Neither of the candidates whom he patronised was elected. The defeat was felt the more keenly, as one of the successful candidates was Lucius Quinctius Flamininus, the brother of Titus, who, as the conqueror of Philip, was Scipio's chief rival for military glory.[1] Not until two years later, after the beginning of the Syrian war, did Scipio succeed in bringing about the election of his incompetent brother Lucius Scipio to the consulship for 190 B.C., by undertaking to accompany him as legate into the field. In this election, as well as in the arrangement for conducting the war, we can see how the family influence of the Scipios determined the action of the state. But the Scipios were soon to learn that in the nobility there were forces which baffled their control. After the conclusion of the Syrian war their personal opponents, at the instigation of Cato, directed a formidable attack against them, and the two great public trials in which the most prominent family of the Roman nobility was pulled down from its high and overbearing position produced a great and beneficial effect. To these trials it is principally due that the danger which threatened the republic was for a time averted. The impeachment of the Scipios was a forcible and effective protest against the presumption of men who dared to show some inclination to play the masters in a free state. Yet even this violent struggle cannot be said to have been undertaken in the interest of abstract principles. It was a personal dispute between an overpowerful family and that part of the nobility which was endeavouring to remove the influence of this family and maintain some sort of equality among all the noble houses.

The leader of the party hostile to the Scipios was M. Porcius Cato, a man who was enabled to take a prominent

[1] Liv. xxxv. 10. This is one of the instances of elections hotly contested by rival candidates of the same political party who opposed each other on merely personal grounds. See above, p. 321. Livy says: In exitu iam annus erat, et ambitio magis quam unquam alias exarserat consularibus comitiis. Multi et potentes petebant patricii plebeique . . . . sed omnium oculi in Quinctium Corneliumque coniecti . . . . ceterum ante omnia certamen accendebant fratres candidatorum, duo clarissimi ætatis suæ imperatores, &c.

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Career of M. Porcius Cato.

position in political life, not by hereditary wealth or the influence of his family, but solely by his personal energy, his indefatigable activity, his undaunted spirit, his stern and genuine Roman virtues. He knew and had often practised the art of employing the law and the sense of justice of his fellow-citizens for his own ambitious purposes, and he could thus make his own virtues serve his political ends. He constantly advocated the good old habits of moderation, self-control, and justice, and so attained to greatness in spite of his slender abilities. By running down his rivals and unmercifully exposing their faults, he came to the front, and actually succeeded in obtaining one after another the highest offices of state.

Cato's manœuvres for the censorship.

After his consulship, in which, according to his own account at least, he had thoroughly conquered Spain, Cato had in 191 B.C. gone to Macedonia as legate to Acilius Glabrio, and had contributed to the forcing of the pass of Thermopylæ [1] by making a circuit and attacking the enemy in the rear. After this exploit he had hastened back to Rome before his general, in order to slander him and to place his own services in the most brilliant light. In the following year Glabrio celebrated a triumph, and at once applied for the censorship. Cato competed with him for the same office, and to clear the road for himself he supported as witness a formal charge against his rival for having appropriated to his own use a part of the booty made in the war. Doubtless the accusation was well founded, and Cato's share in it would have been honourable for him if it had been brought forward from a pure sense of justice and not as an electioneering manœuvre. Glabrio, to escape condemnation, withdrew from the candidature, and Cato thereupon dropped his accusation when it had answered its object. By his hostility to Glabrio, who was a client of the Scipionic family, he had entered into a direct opposition to this powerful house. It was probably the result of their great influence that in spite of his skilful assault on his rival he himself lost

[1] Vol. iii. p. 125.

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his election. The censors chosen for 189 B.C. were M. Claudius Marcellus and T. Quinctius Flamininus. Cato, however, could not submit to the loss of an office which would enable him to display those virtues on which he particularly prided himself. The toil of years might be needed before his end was attained; but he never thought of shrinking from the task, and he directed his whole energy to this one aim with iron perseverance. The victims of this dogged determination were his personal enemies the Scipios, the prize at stake was the censorship, and the final result was the surname 'Censorinus,' which has remained his title of honour in the history of Rome.

Cato and the Scipios.

That the Scipios would oppose his candidature, Cato could easily foresee, and he was probably prepared for a sharp struggle. But what gave peculiar asperity to the fight was the circumstance that his competitor for the censorship was no other than Lucius Scipio himself, the conqueror of Antiochus, who, though a man of no particular merits and no ability, became a dangerous rival through the splendour and power of his family, and, above all, through the high position of his brother Publius. Besides, Lucius Scipio had just returned as the conqueror of the powerful king of Syria, and had with great magnificence celebrated a triumph (188 B.C.), which far surpassed the show which Cato had exhibited a few years previously on his return from Spain.

The war indemnity of Antiochus.

The first attack upon the Scipios was made in the senate in the following year (187 B.C.) by two tribunes of the name of Petillius.[1] They demanded an account of the disposal of certain sums of money during the Syrian war, especially of the three thousand talents which Antiochus had paid down as a preliminary payment towards the war contribution of fifteen thousand talents imposed upon

[1] Polyb. xxix. 9*a*; Gellius iv. 18. Livy, following the account of Valerius Antias, commits the error of speaking of an accusation before the people. Liv. xxxviii. 50. On the date of the proceedings see Liv. xxxix. 6, 4, and Mommsen, *Forschungen*, ii. p. 480.

him. Lucius Scipio had used this sum for military purposes, and it could not have been difficult for him, under ordinary circumstances, to convince the senate—the supreme financial authority—that it had been employed in the interest of the state and not for his own private advantage.[1] The inquiries into such matters were generally not very strict and searching; nor could they be so, since the control of the employment of such sums was not in the hands of independent authorities,[2] and as the senate was after all obliged to be satisfied with the statements of a consul or his subordinate. Thus, whether Lucius Scipio was or was not perfectly innocent, he was prepared to give the desired information. But the manner in which it was demanded by Cato's friends might seem to imply an assumption of his guilt. It certainly showed want of confidence, and offended the pride of Scipio Africanus. Although not he, but his brother, was the person called to account, he took the insult as directed against himself; and instead of laying the account books before the senate for inspection, he tore them in tatters, and cast them at his opponents' feet.

Tactics of Publius Scipio.

Such theatrical fencing was not calculated to beat off the attack. The senate, being merely a consultative body, could do nothing more if Scipio refused to give further explanation in the matter; but, at the same time, they could not thus suffer themselves to be branded by men who, after having laid down office, were no more than private citizens, and liable to give an account of their official acts. The senate had no direct judicial authority, but by roundabout means it was not difficult to apply the penal law in such a manner that the senate itself might practically dictate the sentence.

To effect this object, two tribunes, both called Petillius,

[1] On the duty of the magistrates to account for sums of money which they had received either from the public treasury or as booty of war, see Mommsen, *Röm. Staatsr.* i. p. 89. *Forschungen*, ii. p. 432.

[2] The quæstors, who were the paymasters in the army, were generally so dependent upon the consuls that they might be looked upon almost as subordinates.

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Special commission of inquiry.

were induced to bring the matter before the people.[1] A motion was introduced by them into the comitia tributa, to the effect that the senate should be called upon to appoint a special commission for the purpose of investigating and eventually punishing[2] the embezzlement of public funds in the war against Antiochus. Cato supported this motion with all the power of his eloquence, and induced two tribunes—Quintus and Lucius Mummius—to give up their intended intercession; so that the motion

[1] The motion of the tribunes and the consequent indictment of L. Scipio were an immediate consequence of Scipio's refusal to justify himself in the senate by producing the books of accounts. Livy justly represents it as standing in direct connexion with the discussions in the senate. It must therefore have taken place soon after that scene in the senate, and it is impossible that, as Mommsen thinks (*Forschungen*, i. p. 479), two years should have elapsed before Cato and his friends replied with a formal indictment to the haughty conduct of P. Scipio. The date given above follows, moreover, from the fact that the *rogatio Petillia* must necessarily have been made in the year 187 B.C., at the end of which Cn. Manlius celebrated his triumph (Liv. xxxix. 6, 4). For Manlius, to whom a triumph had long been decreed (Liv. xxxviii. 52), did not venture to avail himself of this permission, and to come to Rome for fear of the prætor Terentius Culleo, to whom the conduct of the investigation had been entrusted, and who had condemned Lucius Scipio. Manlius had remained outside the town, and only celebrated his triumph in March 186 B.C., a few days before Terentius Culleo laid down his office. Consequently the trial and condemnation of Lucius Scipio, as well as the rogatio Petillia, and the discussion in the senate about the embezzled war-contribution, must have taken place before that date—*i.e.* in the year 187 B.C., in which Livy places all these events. We arrive at the same result from another combination. Lucius Scipio celebrated his votive games in 186 B.C. Liv. xxxix. 22, 8. These games were exhibited by Scipio *after* his condemnation, as is generally admitted; consequently the trial took place 187 B.C. Finally, this is confirmed by the fact that Tiberius Gracchus, who as tribune interceded in favour of Lucius Scipio, held his office in 187 B.C., and not two years later (Liv. xxxix. 5). It is absolutely necessary to fix the trial of Lucius Scipio before that of his brother Publius; otherwise we cannot understand the course of events, or bring the account into harmony with several points of detail which are chronologically fixed. We follow in this arrangement Nissen (*Untersuchungen über die Quellen des Livius*, 1863, p. 217 ff.) in opposition to Mommsen (*Forschungen*, ii. pp. 417–510), who, though he rejects the chronology of Livy, adheres to the order in which Livy places the two trials.

[2] Liv. xxxviii. 54, 3: Fuit autem rogatio talis, velitis iubeatis Quirites, quæ pecunia capta ablata coacta ab rege Antiocho est, quique sub imperio eius fuerunt, quod eius in publicum relatum non est, uti de ea re Ser. Sulpicius, prætor urbanus, ad senatum referat, quem eam rem velit senatus quærere de iis qui prætores nunc sunt.

was unanimously agreed to by all the tribes. The senate was now authorised and compelled by a popular decree to institute a formal judicial inquiry, and to nominate for this purpose a number of men from their own body, who were in fact nothing but a senatorial committee. The president of this committee was the prætor Q. Terentius Culleo, who, although under great obligations to Publius Scipio, because he had been released by him from Carthaginian captivity, seems nevertheless to have been among the opponents of the accused. The court convicted Lucius Scipio, his quæstor Caius Furius Aculeo, and a legate, Aulus Hostilius, of embezzlement (*peculatus*), and condemned them to restore the missing sums. Scipio refused to give hostages for the payment, in accordance with the law, and was about to be placed in confinement when the tribune Tiberius Gracchus interfered and prevented the execution of the sentence. The prætor thereupon seized the property of the condemned Scipio for the benefit of the state. But this was the means of bringing his innocence to light; for it proved to be of such moderate amount that the sum with the embezzlement of which he was charged could not be realised.[1]

[1] There are two reports on the trial of Lucius Scipio, utterly contradictory and irreconcilable, between which we are obliged to choose. The one which we have given in the text is taken from Livy (xxxviii. 50-60, with the exception of a part from c. 55, 8, to 57, 8). The second is not contained in a coherent narrative, but is preserved in several pieces, especially by Gellius, iv. 18, and vi. (vii.) 19, and in the note inserted in Livy's account (c. 55–57). According to this second version, L. Scipio is accused by a tribune called Minucius Augurinus before the people, as it would appear, in comitia tributa. The primary source of this second version is unknown. Possibly, as has been conjectured by Nissen and Mommsen, it is the old annalist Claudius Quadrigarius. But if this should be so, it does not follow that every statement which differs from this of Claudius must be unhesitatingly rejected. On the whole, it is true that Valerius Antias deserves his bad reputation for mendacity. But his mendacity consists chiefly in boastful exaggerations. He has no inventive power. Now, as his report of the trials contains a mass of detail, with names and facts which are perfectly in accordance with all that we otherwise know of these events, I cannot see why it should be condemned *in toto*. It has not been proved by Mommsen that the legal proceedings, such as he describes them, are irreconcilable with the forms of Roman law at that time in force. At least I should not like to take upon myself to say that the old Roman annalist's law was bad, and I therefore accept his account as substantially

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Counter tactics of Lucius Scipio.

The object of the prosecution which Cato had had in view seemed thus to be gained. His object had been to push aside an inconvenient competitor for the censorship. However, if he thought that he had already succeeded, he was mistaken. A political trial, even if it ends in condemnation, has not always in times of violent party struggles the result of discrediting the condemned among his adherents. On the contrary, it often urges them to fresh exertions. To regain the credit he had lost, Lucius Scipio resorted to a device which hardly ever failed to secure the favour of the Roman people. He gave out that in the war with Antiochus he had vowed to celebrate his victory with public games, and that he now intended to give these games.[1] He consequently entertained the people for ten days with spectacles of various kinds (186 B.C.). By this means his prospects for the censorial election were more improved than they could have been injured by the prosecution and condemnation. Cato accordingly was again compelled to resort to the penal law as a means of defeating the election of the rival candidate.

Cato and Publius Scipio.

Lucius Scipio was himself no formidable antagonist, but he became so by the support of his brother Publius, the conqueror of Hannibal. This was the man against

correct. On the other hand, I have the feeling that the second version, derived principally from Gellius, is in great part drawn from such compositions as were made by teachers and pupils of rhetoric, and for which the famous state trials of the old time furnished the topics.

[1] As, according to Livy (xxxviii. 60, 8), the property of L. Scipio was confiscated for the payment of his fine, it was necessary to explain how he had the means for exhibiting public games. One version was that he procured for himself a mission to Asia for the ostensible object of settling disputes between king Antiochus and king Eumenes; that on this occasion he collected from the Asiatic states money and performers for the games in Rome (Liv. xxxix. 22, 8). Another story, preserved by Pliny (*Hist. Nat.* xxxiii. 10, 138), relates that the people in Rome voluntarily collected and gave him the money. Probably both these stories are fictions, concocted partly for the purpose of explaining the fact that Scipio had the means for great expenses at his disposal, partly to exalt him by showing how popular he was at home and abroad. But we should not be surprised if, in spite of execution and confiscation, Scipio had managed to secure money enough, and to place it beyond the reach of his opponents. Should he have failed in this, his brother Publius, who was enormously rich, would readily supply what was wanted.

whom Cato now directed his attacks. As Publius could not be made answerable for the application of the sum which his brother had received, he was accused before the tribes, at the instigation of Cato, by the tribune M. Nævius[1] (185 B.C.), of having been bribed by Antiochus to procure for him favourable conditions of peace.[2] An accusation of this kind, which in the very nature of the case it was impossible to substantiate by evidence, could be brought forward with a chance of success only before a popular tribunal likely to be guided more by feeling than by strict rules of evidence. But for the same reason the accused had a prospect of gaining the victory over his opponent by influencing the disposition of the public. This Scipio endeavoured to do in a most characteristic manner. Not by humble submission and fervent prayer, as was the general custom of the accused, but with self-conscious pride and contempt for his prosecutor, he spurned the unworthy imputation. It was easy for him to represent his deeds in a brilliant light, and to connect his fame with that of the Roman people in such a manner that they would necessarily seem to be lowering themselves if they

[1] The name of the tribune, M. Nævius, as the accuser of P. Scipio, is given by Gellius (iv. 18, 3), and confirmed by Cicero (*De Orat.* ii. 61, 249). On the other hand, Livy (xxxviii. 50, 4), or rather Valerius Antias, substituted the two tribunes of the name Petillius, who had first brought forward the hostile motion in the senate. This is a fundamental error, and the chief cause of all the confusion in the narrative of the famous Scipionic trials. Instead of keeping apart the three proceedings—viz. the inquiry in the senate, the accusation of Lucius and that of Publius—and instead of relating them successively, Valerius, or somebody before him, bundled them together into one great attack upon the Scipios, begun and ended in one year. Thus it happened that the real chronological order was inverted for the purposes of the narrative, and that the name of Nævius disappeared.

[2] Gellius, iv. 18, 3: Cum M. Nævius tribunus plebis accusaret Scipionem ad populum diceretque accepisse a rege Antiocho pecuniam ut conditionibus gratiosis ac mollibus pax cum eo populi Romani nomine fieret. Liv. xxxviii. 51, 1. The time of the trial must be fixed in the *year* in which Nævius, according to Livy (xxxix. 52, 4), was tribune of the people—namely, 184 B.C.; or, more accurately, the year between December 10, 185, and December 10, 184 B.C. The indictment of P. Scipio was no doubt planned and prepared by his opponents before the election of Nævius, and was commenced without delay after he had entered upon his office, perhaps before the close of 185 B.C.

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considered him capable of a base action.[1] When, therefore, on the second day of the trial, Scipio appeared on the market-place, he reminded the people that it was just the anniversary of the day on which he had defeated the greatest enemy of the Roman nation at Zama. It was not fit, he said, to bring a charge on this day against the man to whom it was due that the Roman commonwealth still existed. He was not going to lower himself by listening to the insolent accusations of a vulgar brawler, but he would render thanks to the protecting gods of his country. With these words he left the forum and went to the Capitol, into the temple of Jupiter, and thence to his home, accompanied by the mass of the people, while the tribune and his official attendants were left alone in the market-place.

Voluntary exile of Scipio.

This, it is true, did not terminate the prosecution. Cato and his party were not the men to be intimidated by rhetorical clap-trap. But the trial was postponed because the accused, on the plea of ill-health, left Rome and retired to his country seat near Liternum. Scipio could not make up his mind to appear once more before the people to clear himself of charges so fatal to his honour. He was too proud to accept even an acquittal from the goodwill of the multitude. His temper was soured with the feeling of having his great services requited by ingratitude; he spent the rest of his life in voluntary exile, and died, without having returned to Rome,[2] in the year 183 B.C.

[1] Liv. xxxviii. 50, 11: Iussus dicere causam sine ulla criminum mentione orationem adeo magnificam de rebus ab se gestis est exorsus, ut satis constaret neminem unquam neque melius neque verius laudatum esse.

[2] When Lucius Scipio had been condemned to refund the sums unlawfully appropriated, and had refused to give securities for the payment, an order was given for his imprisonment. His brother Publius happened during the trial to be absent as 'legatus' in Etruria. Upon the news of his brother's position he hastened back to Rome, and by his zealous intervention obtained the intercession of Sempronius Gracchus, one of the tribunes, in favour of Lucius Scipio (Liv. xxxviii. 56, 8). This somewhat theatrical intermezzo looks suspicious—nay, it is utterly incredible on the assumption that the trial of Publius was commenced before that of Lucius. If the character of the haughty conqueror of Hannibal is correctly drawn in the annals, we think it

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Later fortunes of the Scipios.

On his deathbed Scipio ordered that his ashes should not rest in the family vault outside the Porta Capena. Even in death he wished to remain away from his ungrateful country. When the historian Livy visited his grave in Liternum, he found his statue thrown down from its pedestal. The star of the great family of the Scipios had paled. Only once, in the adopted son of his own son, the younger Scipio Æmilianus, who passed from the family of the Æmilii into that of the Scipios, the name acquired new military reputation, and then the family sank into insignificance.

Character of Publius Scipio.

Scipio Africanus has been counted among the great men of antiquity; but that is an honour which he hardly deserves. A great part of the respect that he enjoyed is due to the position of his family, which was then the first in Rome. As a general he distinguished himself among the mass of Roman commanders by daring to conceive bold plans and contriving to execute them with spirit, whereas the majority of them scarcely ever ventured beyond the general routine. As a statesman he was with-

impossible that, after his disdainful refusal to submit to the indignity of a public trial, he should have availed himself of the pretext of a senatorial mission for the purpose of keeping out of the way; even if we say nothing of the small probability that Cato and the rest of his enemies would have allowed the trial to break down through such a subterfuge. It is still more improbable that Publius Scipio would have condescended to implore the intercession of a tribune, especially if that tribune, as is reported of Gracchus, was his personal enemy. On the other hand, the absence of Publius Scipio from Rome during the trial of his brother Lucius can be admitted and understood if we place his own trial after that of Lucius. In that case, being himself not directly attacked or accused, but only annoyed at the charge brought against his brother, a charge which he thought unfair and easy to rebut, he may have chosen for a time to absent himself. His affection for his brother may even have induced him to return and to intercede in his favour, which he could never have done had he himself been under an accusation at the time. But, on the whole, we are inclined to doubt the story of the intercession of Publius in favour of his brother, and all that is connected with it. The speech of Tiberius Gracchus, quoted by Livy (xxxviii. 56, 5), was, as Livy himself surmised, not authentic. It was a rhetorical composition of a much later period, and cannot be used as historical evidence. It is even probable, as Mommsen suggests (*Forschungen*, ii. p. 502), that the so-called speech of Gracchus was a party pamphlet dating from the civil wars shortly before the murder of Cæsar.

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out original ideas, and too much taken up with personal and family policy to devote himself with singleness of purpose to the welfare of the state. At a time when the wealth and integrity of the Roman people were decaying more and more under the selfish rule of the nobility, he neither endeavoured, like Cato, to arrest the increasing degeneracy by legal or constitutional means; nor did he conceive the idea of a reform, like his grandsons, the two Gracchi, who were unfortunately born too late to retrieve the fate of the republic. On the contrary, he supported and strengthened the preponderating influence of the nobility, and for his own person he ventured to claim an exceptional and independent position. But his taste for the exercise of irresponsible power was not seconded by genius and audacity. Had he possessed these qualities, he might, in point of fact, have secured for himself that undisputed supremacy in the state which would have satisfied his pride.[1]

Public services of Cato.

When the dominion of the Scipios in the senate had been overthrown, Cato obtained the censorship (184 B.C.), and from this time up to his death, for thirty-five years, he remained, not the leader of the nobility (for such a position was incompatible with the nature of the oligarchy), but at least the man most influential in their councils. Although his activity as an advocate both for prosecution and defence, as a political orator before the people and in the senate, and finally as ambassador on various occasions, was unceasing, he found time, nevertheless, to superintend his own private affairs, to increase his property by commercial speculations, to watch over and conduct the education of his children, and to indulge in study and literary labours. By his fearless attacks upon the political sins of his contemporaries[2] he made a great number of enemies,

[1] P. Scipio died 183 B.C., within the space of one twelvemonth after his great rival Hannibal and Philopœmen. There has been much controversy on the subject of the date of his death, caused by the divergence among the classical writers themselves. In my opinion the point is definitively settled by Mommsen (*Forschungen*, ii. p. 479 ff.).

[2] Seneca, *Epist.* xiii. 2, 9 (87, 9): Scipio cum hostibus nostris bellum, Cato cum moribus gessit.

and was himself accused no less than forty-four times; but each time he had the satisfaction of being acquitted. Like a bully, trusting to his own strength and skill, he sought disputes on all sides, actuated, it is true, by the conviction that he was fulfilling a public duty, but certainly not without the hearty satisfaction of seeing his personal enemies wince and writhe under his blows. His share in the impeachment of the Scipios is an example. More unselfishness and noble-mindedness were displayed by him in his attack on the wretched Sulpicius Galba, the ruffianly butcher of the Lusitanians, whom he accused before the people in his eighty-fourth year, a short time before his death.[1] We see plainly by Cato's course of action what an important part political trials occupied in the life of the Roman republic; how they were calculated to complete or to be a substitute for the imperfect control to which the magistrates were subjected.[2] We see that no sufficient provision had been made to keep the body politic in a sound and healthy condition, and that it was absolutely necessary to adopt these partial and violent remedies for the cure of evils inseparable from a form of government which confided enormous discretionary powers to men exposed to great temptations.

Oratory of Cato.

Hence forensic eloquence was, next to military service, the course of training for those who aspired to political honours. Cato had already learnt the rudiments of this art in his native place, the country town of Tusculum, and he continued his studies in Rome till he became one of the most redoubted rhetorical gladiators of his time. His political eloquence would have been a powerful instrument in his hands, if he had chosen to exert his great strength of will not for the preservation or restora-

[1] Vol. iii. p. 388.

[2] This is the light in which we should look at the political trials so frequent in republican Rome. Mommsen (*R. Gesch.* ii. p. 73) represents them as an abuse and a sign of decay. 'It became customary,' he says, 'for beardless youths of noble birth, who wished to enter with *éclat* on public life, to play the part of Catos with the crude passion of their puerile eloquence, and by attacking some prominent and unpopular man to assume the character of guardians of public law.' Granted that this often was the case, it does not prove that state trials in Rome served no other and higher purpose.

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tion of worn-out institutions, but for reforms demanded by the age. However, there is no evidence to show that he was anything but a one-sided conservative. He saw the greatness of Rome in the olden time,[1] and he endeavoured without success to bring this old time back. He was earnest and sincere, but he was not always true in action to the principles he professed. Although no man in Rome was in the habit of putting so little restraint upon his own tongue or pen,[2] he constantly railed against others for talking much. He boasted with blatant self-sufficiency of his hostility to the Greeks, of his contempt for everything Greek; but he diligently studied Greek, and culled flowers from the Greek Parnassus to adorn his speech. He preached moderation and abstinence in private life, but was as eager for pecuniary gain as any Roman could be. His home and foreign policy was not more guided by firm principles than his private life. His magnanimity towards the Rhodians [3] contrasted strangely with the ferocity which he evinced on all occasions to the unfortunate Carthaginians. For him the ideas of right and wrong were determined by what, according to his own notion, was demanded by the interest of the state. If he had lived in the Middle Ages, he would probably have turned zealot for the Romish Church, would have preached asceticism and fanaticism, and his morals would have been those not of general humanity, but of that party of which he had made himself the champion.

Personal character of Cato.

It speaks greatly in favour of Cato and of his contemporaries that, in spite of his lack of personal amiability, he never lost the universal esteem. If the younger Scipio, as even Polybius reports, preferred keeping away

[1] Mommsen on several occasions speaks of a reform party as having existed at Rome in Cato's age, and he represents Cato as the soul and leader of this party (*Röm. Gesch.* i. p. 825). Yet he finds that there was after all more noise and talking than action (*ibid.* ii. p. 73). The fact is, there was no such party at that time, and if there had been, Cato would most assuredly have been its bitterest opponent. He was a conservative to the core.

[2] Cato's tongue was never quiet. Of his published speeches, fifty were known to Cicero (*Brut.* 17).

[3] Vol. iii. p. 269.

from the forum to making enemies by public accusations,[1] Cato deserves our respect for the defiant and manly spirit that animated him in his untiring contest with the vices of the age. The man who thus acted as guardian of public morals had to take care that his own life was free from stain. He therefore practised the two virtues, which were then in Rome the rarest and the most highly honoured, economy and honesty. He did not rob and plunder the public property like others; he exacted no contributions from the subjects for his own benefit; nay, he was conscientious even to niggardliness, and by making paltry savings exposed himself to the laughter of those who looked upon extravagance and waste as noble failings. In his own person and in his home he was a pattern of simplicity, of frugality and decorum, which met with universal admiration, but he was unfortunately imitated by none. He was honoured even when dreaded as an opponent. His word always carried great weight, even if his opinion did not prevail. The nation was proud of a man who became more eminent the older he grew, as a representative of the olden time, and he inspired admiration by his inexhaustible bodily and mental vigour. After his death his statue was erected in the curia,[2] and truly no Roman had a better claim to this distinction than the man who so worthily represented the genuine Roman spirit.

The younger Scipio.

In spite of the firmness of which the aristocratic rule boasted, signs of opposition became visible soon after the death of the elder Scipio, signs which must be regarded as the forerunners of the great revolution in the time of the Gracchi. It was not possible, after all, in the long run to overlook all the demands of the present and to govern for ever according to the principles of the good old time. The younger Scipio, the son of Æmilius Paullus and pupil of Polybius, was qualified not only by the position and wealth of his family, but also by his personal ability

[1] Polyb. xxxii. 15, 8.

[2] Valer. Max. viii. 15, 2. Plut. *Cato m.* 19.

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as a soldier, to play a leading part in the government of the republic. But he appears to have had fewer qualifications as a statesman than even his predecessor, the elder Scipio, because he was too gentle and yielding and feared to make enemies. Hence, in spite of his relationship with the brothers Tiberius and Caius Gracchus and with Claudius Pulcher, he shrank from supporting the measures of reform advocated by the leaders of the new popular party.

Effect of the wars in Spain and northern Italy.

It was principally the exhausting wars in Spain which, in connexion with the universal impoverishment of the Italian peasantry, aroused the slumbering opposition and urged the tribunes to fight again for the people against the ruling classes, after they had for a long time served only the interests of the aristocracy. The Spanish wars were so unpopular that it became difficult to levy troops for them. In the exercise of their proper and original rights the tribunes now ventured to protect the refractory recruits.[1] Indeed, the campaigns in Spain were very different from those in Greece and Macedonia, where the personal risk was small and the prospect of booty great. In the Iberian peninsula the Roman armies were terribly decimated by the warlike natives; and the struggle seemed interminable. Owing to the remoteness of the theatre of war, the soldiers could not be annually dismissed to their homes, and the few who were at length lucky enough to return to Italy brought back broken health instead of riches.

Unpopularity of service in Spain and northern Italy.

The wars in Spain lasting so many years were not only a great strain on the resources of Italy by swallowing up army after army;[2] they also caused serious damage to the honour of the Roman arms and even to the national honour itself. They had not the least attraction for the poorer citizen or peasant, nor could it be asserted that they were waged for the security of Italy. Hence it is not to be wondered at that the continual levies of

[1] Polyb. xxxv. 4. Appian. *Hisp.* 49. Liv. epit. 48, 55. Oros. iv. 21.

[2] Vol. iii. p. 374, n. 2.

troops for Spain called forth in Rome as well as among the allies disgust and occasionally even resistance. The other wars, especially those carried on in the north of Italy, which bore a great resemblance to those in Spain, produced similar effects. Italy was deprived of her best strength; the small farms were neglected, deserted, or bought up by the large landed proprietors. Other causes in conjunction with the wars tended to produce the same result. Among these were the importation of corn from the provinces, the want of enterprise which marked the Romans in trade and industry, and, above all, the unfavourable condition of the allies, caused by their political disabilities.

Renewed internal dissensions.

Thus it happened that after a long interval of rest the Roman republic was again stirred by new internal commotions. We hear something of tribunicial proposals for the distribution of corn.[1] Lælius, the friend of the Scipios, is said to have entertained the idea of introducing an agrarian law, but, on finding the measure too dangerous, to have abandoned it in despair. For this timidity he was honoured with the surname of the 'Wise'[2] by those who valued the preservation of peace more than the restoration of internal health to the state.

Law for controlling provincial governors.

An innovation of great moment was the establishment of a tribunal proposed in 149 B.C. by the tribune L. Calpurnius Piso for the sole purpose of making the provincial governors really responsible for extortions (*quæstio repetundarum*), the inefficient popular jurisdiction for the trial of these offences being thus abolished, and senators appointed judges under the presidency of a prætor. This law laid bare the most serious defect in the entire organism of the state. Things had indeed become serious when a special commission had to be instituted for the trial of Roman magistrates as a special class of offenders, and when these commissions from being occasional had to be made permanent. The evil had clearly struck deep roots when this new remedy was attempted.

[1] Valer. Max. iii. 7, 3.

[2] Plut. *Tiberius Gracch.* 8.

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Unfortunately it proved fruitless. The senators showed themselves unworthy of the confidence which the law reposed in them. The reformer of the state now had to solve the difficult problem of finding a legal machinery fit to replace these highly important tribunals. We shall see in the course of this history how the Gracchi attempted to solve the problem and how they failed.

The Gabinian and Cassian laws.

For a long time the nobility had managed to avail themselves of the democratic forms for the purpose of governing the state. As the tribunes of the people had become the tools of the senate, the votes of the people in the comitia were in reality nothing but the formal sanction of the senatorial decrees. The standing formula employed was couched in the following words: 'On the resolution of the senate the tribunes ask of the people and the people command.' For a long time the people rarely showed any disinclination to allow themselves to be guided by the senate. But now the signs of opposition appeared here also. In the year 139 B.C. secret voting was introduced for the elections by the *lex tabellaria* of Gabinius,[1] and two years later the law was extended to the popular tribunals by the *lex Cassia*. These laws, introduced by tribunes clearly in opposition to the nobility, were intended to secure the independence of the popular votes. But considering the universal demoralisation of the great multitude, called the Roman people, an independent popular vote was quite out of the question. If the nobility could no longer succeed in holding the

[1] Cicero, *De Legib.* iii. 15, 34: Quis non sentit omnem auctoritatem optimatium tabellariam legem abstulisse? quam populus liber nunquam desideravit, idem oppressus dominatu ac potentia principum flagitavit. *Ibid.* 16, 35: Sunt enim quatuor leges tabellariæ, quarum prima de magistratibus mandandis: ea est Gabinia lata ab homine ignoto et sordido. Secuta biennio post Cassia est de populi iudicio. Ea a nobili homine lata, L. Cassio, sed pace familiæ dixerim dissidente a bonis. Cicero's words clearly show how distasteful the ballot was to the nobility. He blames in the same chapter the younger Scipio for giving his support to the Cassian law. The third law on the ballot, which applied it to legislative votes (*de iubendis legibus et vetandis*) was passed by Papirius Carbo, whom Cicero calls 'seditiosus atque improbus civis.' It belongs to the period of the Gracchi.

sovereign people in leading-strings and contenting them with the existing government, the mass necessarily fell into the hands of the first demagogue who had enough intelligence and courage to place himself at their head and to reform the state according to his pleasure.

SEVENTH BOOK.

EXPANSION OF THE REPUBLIC INTO AN EMPIRE.

CHAPTER I.

POLITICAL AND ECONOMICAL CONDITION AFTER THE DESTRUCTION OF CARTHAGE.

CHAP. I.

Judgment of Polybius on the Roman constitution.

When in his masterly work Polybius gave an account of the rise of Rome to the dominion over the ancient world, and held up to the admiration of his countrymen the republican constitution of their conquerors as the great masterpiece of political wisdom and action, it had not escaped his sagacity that even this marvellous organism was subject to change and decay. Nay, he had with a sure eye discovered the ominous spot where an internal disease threatened to break out, though the first attack had passed by without doing any permanent harm, and though the body politic had since that time, to all appearance, enjoyed perfect and uninterrupted health. The first change for the worse[1] appeared to him to be the democratic policy of Caius Flaminius, who as tribune of the people (232 B.C.), by a resolution of the popular assembly, unsanctioned by the senate, had carried an important measure for the relief of the poorer classes—viz. the distribution among Roman citizens of the recently conquered Gallic lands in Picenum.[2] By this one-sided action of the democratic element in the constitution, the equilibrium was disturbed which, according to the view of Polybius, existed between the three component forces of the Roman polity, people, senate, and magistrates, representing respectively democracy, aristocracy, and monarchy.

[1] Polyb. ii. 248. See vol. ii. p. 110.

[2] The so-called Ager Gallicus Romanus. See Varro, *R. R.* i. 2.

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Fallacy of this judgment.

But in reality such an equilibrium never existed in the constitution of the Roman republic, and could not exist, as with it no advance and no development would have been possible. When a number of forces, acting in different directions, are equally balanced, stagnation must necessarily ensue. It is manifest that in every living organism which is subject to growth and decay one force must prevail. So it was in the Roman constitution. According to the theory and the existing law it was the people who possessed the paramount and directing power. The people, without the least restraint or compulsion, elected by their free suffrage the men to whom the executive power was to be entrusted for a limited period, and imposed upon these men the obligation of giving an account of their administration to their electors. The assembled people were the supreme judges in all criminal trials. The people finally decided what was to be law, and laid down rules and regulations for the conduct of the magistrates in important matters of policy and administration.

Contrast between theory and practice.

Such was the theory of the Roman constitution. But the practice was altogether different. The people, the primary source of all political power, had long since voluntarily waived its claims to the exercise of that power. The popular assemblies had become mere formalities. The elections alone, where personal animosities were aroused, and bribery was more and more employed to secure votes, stirred the people occasionally into the semblance of political activity; but the popular sanction of laws and acts of government was asked and given only because the old constitutional practice required it, not because it was looked upon as essential or likely to call forth sympathy or opposition. The criminal jurisdiction, as far as ordinary, non-political offences were concerned, passed into the hands of senatorial commissions (*quæstiones*) or ordinary magistrates. The jurisdiction of the popular assembly, clumsy, unwieldy, and troublesome even in the earlier times, had almost ceased except in important

political trials after the Roman people had come to be counted by hundreds of thousands.

The magistrates and the people.

The position of magistrates was very little changed. The right of election and re-election had been regulated and restricted by special laws. Detailed instructions had been given for the performance of official duties, and the vigilant supervision and control of the senate had restrained the magistrates to a certain extent in that tendency to arbitrary and self-willed action to which all Romans in authority were from the first unduly inclined. It was only in the field and in the control of the army that Polybius could possibly discover traces of monarchical power lodged in the hands of the superior magistrates.

Real government of the senate.

All the actual power in the state which the magistrates and, to a greater extent, the people had lost was transferred to the senate. It was this body, practically representing the nobility, which had in its hands the real government of the republic, by directing the action of all the magistrates and by preparing and determining the resolutions of the popular assemblies without ever meeting any opposition based on political principles. In truth the Roman republic had become a government by the senate. The senate was looked upon by citizens, subjects, and foreign princes and peoples as the bearer and wielder of the Roman power. With rare exceptions, all the executive magistrates submitted to its authority, and the docile people sanctioned, when they were bid, the senatorial propositions, and conferred upon them by formal suffrages the force of law.

The senate and the people.

It is not difficult to see that the old constitution, devised for the city of Rome and a few neighbouring villages, was not suited for the government of the whole of Italy, still less for an empire spreading over transmarine provinces, and including powerful kingdoms and dependencies. How could a meeting of tradesmen and peasants in the Roman market-place be qualified to direct a policy stretching so far beyond their horizon? It was an unavoidable necessity that this policy should become de-

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pendent upon a select body of professional statesmen, men who by birth, education, wealth, superior powers of mind, by devotion to public affairs, experience in business, traditional and hereditary wisdom, and by a higher degree of public spirit and patriotism, occupied a more eminent position in the community, and were more entitled to public confidence than the great mass of those who had to work and struggle for their daily subsistence, and had small leisure and less intelligence to devote to the management of public affairs. The senate was the place of union for the members of the noble families, the school of politics for the younger men, the practising ground for the older. Here lived the memories of bygone ages, the lessons of the great teachers of political wisdom, the hereditary, tried, and approved principles of action, the knowledge of the law. Here alone, therefore, it was possible to discuss political questions in their various bearings, and to examine them from different points of view, to listen to argument and receive information, and in matters of foreign policy to proceed with the necessary caution, dignity, and secrecy. The senate alone, as from an elevated point, could survey and control in every direction the various branches of the administration and government, and could combine to direct the action of the numerous magistrates, so as to carry out a uniform, systematic, and consistent policy.[1] By what chance could it ever happen that a crowd of peasants and artisans meeting in the market-place almost fortuitously, and voting without previous information or deliberation, should come to a decision fit to thwart or control the well-considered plans of a body so eminently adapted for public business as the Roman senate? It would have been strange indeed if any other body of men had presumed to pursue a policy antagonistic to that of the senate. In every emergency, in prosperity and national reverses, in peace and war, the Roman senate had always proved equal to the occasion. It had exhibited the public virtues of Roman citizens in

[1] Above, p. 45 ff.

their greatest perfection; and to it the greatness and power of the republic were especially due.

Pre-eminence of the senate in the state.

Such eminent services had been gratefully acknowledged and rewarded. As a body and individually the senators were the foremost of the Roman citizens. The immense wealth collected at Rome from the spoils of conquered nations had enriched the great families of the nobility and raised them above the condition of ordinary citizens. A senatorial order had been formed, distinct from the rest of the people, and had received special privileges and marks of honour. The elder Scipio had assigned to the senators separate places to view the public games and spectacles. From time immemorial they had been entitled to wear a distinguishing dress. A senator travelling on public or even private business was treated by the allies and subjects of Rome with the reverence due to the majesty of the republic. Foreign communities felt themselves honoured by being permitted to consider themselves as the special clients of some great senatorial family. In short, the greatness and power of Rome were personified by that one assembly in a manner unequalled in any other nation of ancient or modern times.

The power of the senate a usurpation.

If judged by the forms and principles of the established law, this plenitude of power was nothing but a usurpation. No legal enactment had ever conferred administrative or even legislative power on the senate. No resolution or decree of that body was formally binding on any magistrate, or on the people; nay, magistrates as well as people were at liberty, if they chose, to perform any act of administration or legislation without asking leave of the senate, or even contrary to its wish or advice. That the people and the magistrates hardly ever availed themselves of this power is a proof of the sound political sense of the Romans, who were very sagacious in adapting constitutional forms to the altered circumstances of the times. They were content to accept and to recognise the internal change which had taken place in the working of the constitution, and to legalise it practically by use and

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custom. A customary law was formed, which for a time had as much force as if it had been voted by the legislative assembly of the people. Thus it became feasible to transform the old constitution silently and imperceptibly, and without any formal alteration of the law to change entirely its spirit and its working.

Danger arising from obsolete laws left unrepealed.

But though this development was spontaneous and natural, and though it was sanctioned and legalised by custom, it was fraught with danger, because the practical working of the constitution was not in accordance with the original form of law still existing, and the Romans found out by sad experience that it is a grave error to allow formulas and rules to remain unrepealed after they have lost their significance. A law disregarded and obsolete is not dead until it is abolished in due form, and it may become a dangerous weapon in the hands of a revolutionary party, which, under the pretext of restoring neglected laws to vitality, really tries to upset an order of things more in harmony with the existing wants of a nation.[1]

If after the conquest of Italy and foreign provinces

[1] If we compare the origin of customary law in Rome with that of England, we shall find some analogies, but also great differences. In England an uncontested precedent has always been looked upon as determining and making law. The whole of the common law has no other origin but this, and yet it has always been looked upon as no less valid and binding than statute law created by the direct operation of the legislature. The latter has been applied to the completion, adaptation, modification, or repeal of the former, which forms the foundation of all law. In the contests between the Crown and the Parliament the people of England always based their claims upon original, incontestable, hereditary rights inherent in them as freeborn citizens, and thence deduced their demands of special rights and privileges. The royal charters and parliamentary statutes were essentially declaratory. They did not so much create new rights as determine what was right. On the other hand the Roman plebeians had to wrest from the patricians every privilege as the prize of victory. Whatever right was not formally sanctioned and sworn to had only a precarious authority. Hence the government of the senate, which had lasted for many generations, was only submitted to *de facto*: it never acquired the character of a constitutional right, and could therefore be looked upon and treated by the leaders of the popular party as a usurpation. Sulla was the first to discover this flaw. He tried to base the senatorial government upon formal constitutional law by an act of legislation. But at his time it was too late.

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Change in the character of the Roman nobility.

the Roman republic could be governed only by a rich and powerful aristocracy, this aristocracy on the other hand could only expect to hold its authority permanently if, in addition to its political capacity, it possessed sufficient self-control and moderation to resist the temptations to which all ruling classes are exposed—that is to say, so long as they did not unduly abuse their influence to secure their own personal interests to the prejudice of those of the state. Indeed, so long as the republic had to struggle for its existence, so long as it had powerful rivals, and so long as its preponderance was not entirely secured, the Roman nobility exhibited a high degree of political virtue, and thereby secured the firm possession of political power. But this political virtue became relaxed in the warm sunshine of prosperity. The ruling statesmen who decided the fate of foreign potentates and nations could no longer, and did no longer, live, like their predecessors in the good old times of poverty and simplicity, on the produce of their small farms cultivated by their own hands. They had become great landed proprietors and influential capitalists. Nor was this a change which in itself was deplorable or injurious. But increasing wealth had bred an immoderate greed for more. The public administration had become more and more an organization for plundering on the largest possible scale and in every possible direction. The magistrates of the republic robbed not only the enemies of the state with whom they carried on war, but also neutral and even friendly and allied communities, the subject provinces, nay, the state itself. No government, except that of the Turks, has ever equalled the system of unscrupulous plundering carried on by the ruling classes at Rome. Whilst the booty made in war and huge contributions paid by conquered enemies ought to have enriched the public treasury to overflowing, the finances of the republic remained in a wretched condition. They were not subject to any effective control.[1] The senate, being irresponsible in the

[1] Above, p. 164.

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management of the public funds, applied them not to the benefit of the public service, to the improvement of harbours or arsenals, the building or repair of ships, or other purposes of public utility, but to their own profit. The public administration was allowed to fall into disorder. Rome, Italy, and the provinces became more and more unsafe; the sea was infested by pirates; the law was administered by venal judges. A poor man who obtained a command, or was sent out in any public capacity, returned laden with gold. It was the public service, not industry or trade, that had become the chief means for the accumulation of enormous wealth; and with the growth of wealth there grew up simultaneously an impatience of the restraints of custom and law, a boundless arrogance, a spirit of presumption and violence, a practical contempt of the much-praised virtues of the past. Instead of these virtues, self-indulgence and luxury became the fashion among the nobles, who rioted in the lowest sensual pleasures, whilst they affected to rival the Greeks in taste and the appreciation of art.

Changed conditions of Roman society in general.

Under such circumstances it was a serious question for patriotic statesmen whether there were any means of preventing the moral degeneracy from spreading further, and of bringing about a more healthy condition of the community. But no remedies could be found. It was vain to hope for improvements from such paltry measures as laws against bribery (159 B.C.), or laws for voting by ballot (since 139 B.C.), or even from the stricter regulation of criminal jurisdiction by the Calpurnian law of the year 149 B.C. directed against the malversations and extortions of provincial governors. Utterly futile and useless were the laws for the suppression of private extravagance and luxury, the vain endeavours to restore the old simplicity of life and manners, the restriction of comforts and enjoyments,[1] the moral preachings and

[1] How narrow and paltry the Romans could sometimes be in this respect is shown by the proceedings of Scipio Nasica (see next note), at whose request the senate was moved to cause a solid stone theatre, erected by the censors, to

censorial inculcation of ancestral virtues, such as Cato loved to indulge in. Morals were at that time still less controlled by religion than they are at present, nor was even an attempt made by the servants of religion to grapple with the vices of the age. It was not possible to make the Roman state as small and the people as poor as they had been in the good old time. The age and the manners of Curius and Fabricius were gone by for ever. Prosperity, wealth, political power and greatness could not be laid aside at will, even if the conviction had been universal that they were dangerous to the commonwealth. If a reformer undertook to combat their evil influence, it could be done only by setting up a check or counterpoise sufficient to neutralise their evil influence. If he succeeded in discovering such a check, he could hope to preserve the greatness of the republic, and to restore to it internal health and vigour.

Effects of the extension of Roman conquests.

Such a check was, in the opinion of some Roman statesmen, to be found in the continued rivalry of independent foreign powers, like Carthage, whose utter destruction was deprecated by them as likely to hasten on the growing corruption of the people.[1] But these warnings were all in vain. The work of conquest went on in every direction. No moral considerations could retard it, as no moral considerations had prompted it. The expansion of Roman power over the ancient world proceeded as with the force of nature, uncontrollable by human will.

be pulled down, in order that the citizens might not be provided with commodious seats at the public representations, but compelled to stand, as they had been accustomed to do in former times (Livius, epit. 48). Valerius Maximus quotes from the *senatus consultum* the following passage: Ne quis in urbe propiusve passus mille subsellia posuisset sedensve ludos spectare vellet, ut scilicet remissioni animorum iuncta standi virilitas propria Romanæ gentis nota esset.

[1] This was the opinion of P. Scipio Nasica, who tried in vain to check the brutal ferocity of Cato, the implacable enemy of Carthage. Plutarch, *Cato Major*, 27: πολλὰ γὰρ ὕβρει τὸν δῆμον ὁρῶν ἤδη πλημμελοῦντα καὶ δι' εὐτυχίαν καὶ φρόνημα τῇ βουλῇ δυσκάθεκτον ὄντα καὶ τὴν πόλιν ὅλην ὑπὸ δυνάμεως ὅπη βέψειε ταῖς ὁρμαῖς βίᾳ συνεφελκόμενον ἐβούλετο τοῦτον γοῦν τὸν φόβον (the fear of Carthage) ὥσπερ χαλινὸν ἐγκεῖσθαι σωφρονιστῆρα τῇ θρασύτητι τῶν πολλῶν.

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Idea of an appeal to the people.

Under these circumstances a remedy for the abuse of power by a degenerated nobility had to be sought at home, and it was natural that patriotic reformers should fix their hopes on that second element in the community, which from the first had been a counterpoise to the ruling class, and whose stubborn and victorious struggle with the patricians for equal rights had nerved the national spirit, and had qualified Rome to place herself at the head of Italy and of the whole world. Why should it be thought too late to rouse once more the slumbering energies of the people, and with them the old Roman virtues, the honest labour of the peasant, his modesty, his obedience to the laws, his intelligence and constancy in the pursuit of a rational policy, his sense of justice and his integrity, proof against corruption and every undue influence? Such thoughts suggested themselves the more readily as the people—that is, the classes excluded from the government—had, in the gradual revolution of all economical relations, become poor and dependent, whilst the nobility had risen to wealth and power.

Composition of the people.

The Roman people of which we speak—that is, those below the rank of nobility—consisted of three different classes, each of which played a distinct part in the revolution by which the republic was about to be agitated. They were, firstly, the so-called knights, the class of large merchants, bankers, and farmers of the revenue; secondly, the small tradesmen and artisans of the town, the poor and humble clients of the rich; and, thirdly, the population of the country, still engaged in agriculture, and spread over a large area in the thirty-one country tribes.

The allies and the slaves.

Each of these three classes we shall have to consider separately. But before doing this we must glance at two more classes, not of citizens in the strict sense of the word, but of inferior members of the community, who, though they had no direct legal influence in political questions, were important enough by their mere numbers to require to be taken into consideration. These were, firstly, the Latin colonists and the Italian allies; and,

secondly, the slaves. The latter, though treated by the public law of Rome, not as men, but as things, and therefore deprived of all civil rights, were, nevertheless, human beings after all, endowed with human wants and passions, and they were therefore an element in social and political life which could not be overlooked or neglected with impunity. Slavery was an institution not peculiarly Roman, but common to all the nations of antiquity. It was looked upon as established by a natural or divine law, and as inevitable and indispensable. For this reason the evil influence of slavery on society was apt to be overlooked by the ancient historians. We should therefore be the more careful in tracing the effects of the subtle poison which was infused by slavery into all the veins of the ancient communities, which never permitted them to enjoy full health, and made every distemper more complicated and malignant.

The equestrian order.

Next to the nobility in social weight and influence, as we have said, was the moneyed class, which in course of time came to be called the order of knights (*ordo equester*). These knights were not the members of the eighteen centuries of knights (*centuriæ equitum*) of the centuriate division of the people attributed to Servius Tullius. The knights of the eighteen centuries were originally a portion of the military organization of the people, devised in the first place for war, and applied afterwards to the purposes of legislation. They were therefore selected from among the citizens on the ground of their physical qualification for that branch of the service, and were armed and equipped for it at the public expense.[1] At a later

[1] According to the old constitutional practice, ascribed to Servius Tullius, they were provided with the *æs equestre* for the purchase of a horse, and with the *æs hordearium* for its keep. They accordingly served *equo publico*, and on the termination of their service naturally were called upon to give up their horses to others who took their place, or to sell them and to restore the money to the state. We are not informed what was done if the horse was disabled or killed in the service. Possibly the state in that case provided a new one. When at a later period it became customary for knights to remain formally members of the centuries after the military age, without doing actual service, we may suppose that new horses were not provided. It is true, the censors,

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period, when the Servian classes and centuries had ceased to be the groundwork for the formation of the legions, the cavalry of the army was formed irrespectively of the eighteen centuries of knights, and was recruited from the sons of the wealthier citizens, who found their own horses and equipment, and as a compensation for this outlay received three times the pay of infantry soldiers and a corresponding proportion of the booty, whilst even the centurions of the infantry received only double.[1] Nevertheless the eighteen centuries of knights were not formally abolished. They continued to contain the sons of the noble families, who formed a separate body of men privileged to serve as a sort of body-guard of the commanders apart from the ordinary cavalry.[2] At the same time it became customary for the members of the eighteen centuries not to retire upon reaching a more advanced age, and after they had entered on the career of office. The eighteen centuries, therefore, in course of time came to consist partly of senators and men who had been magistrates; they lost their original military character, and remained only as a voting body. It was by the transformation thus effected in the character of the eighteen centuries of knights, whilst the cavalry service passed over to the richer citizens not included in the senatorial families, that a new class of Roman citizens began gradually to be formed, distinct from the nobility proper and from the mass of

on reviewing the list of knights, made use of the words '*vende equum*,' when they intimated their decision that an individual knight should be struck off the roll. But these words, like so many other formal expressions, had lost their original meaning, and implied no more an actual sale of a horse, than the 'acceptance of the stewardship of the Chiltern Hundreds' is equivalent to the appointment of a retiring member of Parliament to that ancient dignity. The *recensio equitum* by the censors had become an act of purely civil administration, and had lost its military character. It determined the list of those who were to vote in the eighteen centuries of knights, not the roll of fighting men. The *equites*, like the knights of St. Patrick or the Bath, might be soldiers, but they might also be old men, long past military service.

[1] Liv. v. 12; vii. 41. Polyb. vi. 39.

[2] These are the *equites illustres* referred to by Livy (xxx. 18, 15): Viginti ferme equites illustres obtriti ab elephantis cum centurionibus aliquot perierunt.

the people, and designated as the equestrian order.[1] It consisted, as has been said, of men of wealth, though for the time of which we speak we have no evidence of an equestrian census, such as was introduced at a later period. Yet we can imagine that even without the aid of such a census a class could be formed sufficiently distinct from the existing classes to play a separate part in the commonwealth.

The senate and the capitalists.

Special circumstances favoured in Rome the formation and growth of this class. In the financial administration of the republic, the raising of the various revenues, the public works and contracts were entrusted to private contractors, who of course were obliged to have large sums of money at their disposal. With the growth of the empire these financial operations assumed huge proportions, and numerous capitalists combined to form companies for the purpose of conducting them. By custom and by law men of senatorial rank were not allowed to embark in such speculations. The lower class of citizens lacked, of course, the means for doing so. Thus it happened that the wealthy capitalists acquired a political and social importance which made them conspicuous and influential. They had frequent relations with the magistrates. The contracts, the various undertakings into which they entered with the government, the services they rendered in peace and war in Italy and the provinces, in the working of mines, salt works, and other demesnes, involved profits or losses of the largest amount. It was most desirable in the interest of the state, as well as in that of the capitalists, that there should be a good understanding, mutual confidence and co-operation between the reigning nobility, which supplied the magistrates, and the moneyed class. On the whole this appears to have been the case, and each party no doubt found that this served its own interests, though the interest of the public and especially that of the subjects of Rome might suffer. The disorder that always reigned in the public finances made it easy for both parties, magistrates as well as contractors, to fill their

[1] When this name was first applied to this class is uncertain.

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pockets. It rarely happened that men like Cato tried to introduce order and to enforce honest dealings in these transactions. Evidently the capitalists as a class had become so powerful that the government could not easily venture to slight or offend them. On the contrary, they had a common interest which ought to have made them friends. Yet disagreements could not always be avoided. The jealousy and haughtiness of the nobility were especially galling to those men who owing to their wealth and social influence felt their exclusion from political power most keenly; and it was therefore natural that a reformer, bent on reducing the undue preponderance of the nobility, should look upon the equestrian order as a class qualified to form a controlling opposition.

Below the knights in social rank, but superior in political influence, was the mass of the poorer townspeople. The populace of Rome, exclusive of course of slaves and strangers, constituted that part of society which chiefly formed public opinion. They were to a great extent clients and dependents of the noble families; their wants and wishes were the constant care of these noble patrons, and in return they gave their votes and their assistance to carry out the measures proposed by them. The whole course of public affairs was directly and constantly under the influence of this sovereign people. But whilst Rome was rising in power and greatness, the original character of this town population had undergone a change not less fundamental nor less ominous for the republic than that which the ruling families of the nobility had experienced.

The urban and rural tribes.

As long as the Roman territory was confined to a limited area in the immediate vicinity of the town, the population of that town exercised but a small influence on public affairs compared with the independent peasantry of the country tribes. The four city tribes comprised the poorer citizens, the tradesmen and artisans—in fact, all those who had the smallest interest in the maintenance of the established order of things. Here were the elements of democracy, and to these city tribes the censor Q.

Fabius Rullianus had, in 204 B.C.,[1] assigned the new citizens, taken chiefly from the class of freedmen. The country tribes were looked upon as containing the conservative element of the Roman people, the independent peasantry and the larger landed proprietors. As these were spread over all the rural districts, the popular assembly of the tribes (*comitia tributa*), though organized upon the broadest democratic principle, without any of the distinctions which differences of age and property produced in the comitia of centuries, could nevertheless work in harmony with an aristocratic government. But this was changed in course of time. Year by year the city of Rome grew in importance; wealth was attracted from all parts to the centre of the empire; the advantages and pleasures offered to the inhabitants of the capital became greater and greater. The country tribes soon felt the influence of this powerful attraction. People migrated to Rome by thousands: not the better sort of the rural population, we may well believe, but adventurers and idlers who speculated on the easy profits to be made in Rome, on the largesses of the great, the bribes at elections, the games and shows and excitement of all sorts. These people who had come from the country tribes to reside in the city were not inscribed in the four city tribes, for it was not customary to shift the tribe with the residence, though in the first instance residence had determined the tribe to which each man was to belong. Thus it came to pass that the population actually resident in the town was composed of members of all the thirty-five tribes, and might be looked upon as a representation of the whole Roman people.[2] The country tribes were entirely swamped in the popular assemblies by a rabble always on the spot and ready to take a part in political proceedings, whilst the respectable peasant could rarely spare the time for a

[1] See vol. i. p. 436.

[2] I am not aware that this has ever been noticed before. Yet it is an important fact, without which the character of the ensuing revolution cannot be properly understood.

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journey to Rome, without which he could not exercise his political rights.

City life in Rome.

Town and country have at all times been opposed to each other, not only in the occupation and wants of their inhabitants, but in feeling, views, and politics. Whilst the Roman peasants lived by the produce of their fields, the townspeople had abandoned agriculture, and made their living by trade and by the traffic of a large town. Thus the poorer men became dependent upon the richer, hangers-on and clients of the noble houses. Their services were wanted by the ruling classes to carry on the government. The wealth acquired by the conquests of the republic was squandered profusely on the needy plebeians. Great numbers of them actually subsisted on the bounties which in one way or another were lavished on them by the great. At elections the votes were systematically bought, in defiance of all the laws against bribery. The distributions of meat, oil, or other necessaries of life, the wages for workmen employed in public works, the endless games and public amusements which multiplied to an ominous extent, had the effect of changing the simple, honest, proud people of the olden time into an idle, venal, dissipated, thoughtless, and reckless populace, ready to perform any service demanded from them by the men in authority. Surely, if the nobility was lost in selfishness and ambition, the Roman people had degenerated no less. Nay, it would not be easy to determine on which side corruption had proceeded further. We are inclined to think that it was on the side of the people. The nobles had at least a will of their own, a political conviction, nay, a sort of patriotism and self-respect; they thought they were enjoying power lawfully and legitimately possessed, and that they were entitled to do with their own as they liked. But the people were a dull, inert mass, living without a thought of the future, too abject even to feel their wretched condition, too ignorant and indifferent to understand or care about political questions, too faint-hearted to rally round a leader that might take up their cause and the cause of the com-

munity at large. The part played by the Roman populace in the disturbances caused by the Sempronian laws is so undignified and contemptible that no observer can feel the least sympathy or even pity for it. We shall see that these men were moved by one care alone, the care for their daily wants; we shall see that they clung as persistently to unjust privileges as the nobility itself; that they were inaccessible to every feeling of noble enthusiasm, to every feeling of gratitude and justice; that they were destitute even of manly courage, and had become strangers to the patriotism of their ancestors.

The old Roman peasantry.

By the side of the nobility, the capitalists and the city plebs, there was a fourth class of Roman citizens, whose peculiar wants and economical condition we must understand if we wish to realise the deplorable state of affairs for which the Gracchi endeavoured to find a remedy. This class consisted of the rural population, engaged as of old in agriculture, and not yet degraded, like the populace of the capital, by a life of idleness and corruption. It was that class in which lay originally the strength of the nation, from which the republic had long drawn her intrepid and victorious legions, to whose sound sense and honest feelings the magistrates had been able, in the good old time, to entrust the decision of the most important political measures matured in the deliberations of the senate. What had now become of this sturdy and respectable peasantry?

Effects of the extension of the tribes.

Let us first look at the change that had taken place in the exercise of their constitutional rights. In the early ages of the republic the men living in the country were able regularly to take part in the annual elections and other public business of the popular assemblies. But after the last Latin war (338 B.C.), when the country tribes extended over the whole of Latium and far away into Etruria, Campania, and the Sabine mountains, this was no longer possible without a sacrifice of time and trouble far beyond the means of the ordinary peasant. It was now a long journey from the remote country tribes to the capital, and

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the number of public assemblies had greatly increased. The country people had no chance of discharging their public duties without neglecting their own work in their fields and farms; nor could this be expected of them in ordinary times when the decisions of the people were mere formalities, when the senate and the magistrates settled between them all public questions and the votes of the people were of no influence to determine them. The numbers who voted in the forum or the Campus Martius were ridiculously small. What did it matter to the Roman peasants whether Caius or Publius was elected consul? So long as the government of the nobility remained undisturbed, it was of little moment how many citizens voted in the comitia; and the consequence was that most of them became utterly indifferent to the exercise of their political rights.

Effects of foreign wars on the rural population.

Simultaneously with this practical loss of their political influence, the Roman peasantry had been lowered in their social and economical relations. Several causes had concurred to impoverish the great mass of the smaller peasants, and to reduce them to a condition distressing in itself and fraught with danger to the community. After the union of the several independent Italian communities under the common dominion of Rome, and the consequent cessation of inter-tribal warfare, it might have been expected that agriculture, feeling the effect of uninterrupted peace, would have taken a new start, and that abundance and happiness would have reigned in those rich plains and valleys which under the industrious hands of a rude peasantry, though often wasted by war, had supported a dense population in numerous towns and villages. But the effect was very different. With the first Punic war began the long Roman campaigns beyond the confines of Italy, which took away the husbandman from his work, not for a few weeks or months, as was the case in former times, but for whole years; and which, moreover, were more wasteful to human life and health. The armies and fleet which perished in the first war with Carthage—such

as the army of Regulus, the fleet of Junius (253 B.C.), the fleet and army of Claudius Pulcher in the battle of Drepana[1] —could not be replaced by the Roman peasantry without weakening them for long periods. Still more ruinous was the murderous Hannibalian war, in which the republic was compelled to keep on foot more than twenty legions, and lost thousands of her best citizens on the innumerable battlefields of Italy, Africa, and Spain. The effect of these battles on the population of Rome cannot be more clearly shown than by the fact that, long before the worst calamities had overtaken her, in the third year of the war she was obliged to enlist slaves for soldiers, the supply of free citizens being already exhausted; and this waste of blood lasted for half a generation. The wars in Macedonia, Greece, and Asia, which succeeded, were less destructive. At least the number of men actually killed in battle was less, and the armies sent into the East were less numerous. But the contests carried on simultaneously in the North of Italy with the Gauls and Ligurians, and those waged in Spain with the Celtiberians and Lusitanians, seem to have been almost uninterrupted and most sanguinary. It was these inglorious wars which more than the wars with the civilised nations of the East drained Italy of her free rural population. In the campaigns in Spain, owing to the great distance from Rome, it was found impracticable to renew the armies periodically after short intervals, and military service was gradually extended to six years.

Growth of a class of professional soldiers.

The natural consequence was that when those soldiers who were not carried off by the wants, the hardships, the diseases of war, or by the sword of the enemies, returned to their farms perhaps with broken health and mutilated limbs, they found that they were unfit for the work to which they had been brought up. Some of them came back laden with booty, and were indisposed to earn by hard labour with spade or plough what could be more easily gained by the sword. But such gains were seldom a lasting benefit to those who made them. The old soldiers,

[1] Vol. ii. pp. 70, 72, 79.

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when they had spent all they had, felt more and more inclined to re-enlist as volunteers,[1] or they joined the stream that swelled the population of idlers and paupers of the capital. Thus agriculture throughout Italy was deprived year after year of the labour which it required. Country towns and even Roman colonies were so weakened and depopulated that they were unable to furnish the necessary contingents for the army.

External causes tending to depress Italian agriculture.

While Italian agriculture was thus suffering through the drain upon the population, it was further injured by foreign competition. By the conquest of Sicily the Romans had obtained the disposal of the rich harvests of that corn-producing island, and had derived from thence large supplies for their armies and for the population of the capital. To Sicily were added at a later period Sardinia and Spain. The price of corn grown in Italy, especially in the vicinity of Rome, was, of course, affected by these large importations. Agriculture became less remunerative, and the Italian peasant suffered accordingly. But it would be a mistake to regard this foreign competition as the chief or even as a very important cause of the decline of Italian agriculture.[2] For the cheap corn of the provinces was used chiefly for the supply of the armies and of the capital alone, and the means of transport were not such that large quantities of corn could in any case have been conveyed to the central market. The agricultural produce of the Italian peasant was after all used chiefly to satisfy the wants of the cultivators themselves, and to supply the markets of the nearest country towns. If the corn of the provinces had not been brought to Rome, its population could not have gone on increasing as it did, but the peasants of Campania, Etruria, and Samnium would hardly have obtained higher prices for their products. The chief cause of their increasing poverty lay in another direction.

In Italy, as in every other country, and in every age,

[1] The frequent habit of employing veterans as volunteers in the later wars is evident from Liv. xxvii. 46, 3; xxviii. 46, 1; xxix. 1, 1; xxxvii. 4, 3. Comp. vol. ii. p. 418; iii. 26.

[2] Mommsen, *Röm. Gesch.* vol. i. p. 849.

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there was a conflict of hostile interests between the owners of large estates and the cultivators of smaller properties. As long as society was simple and agriculture rude, and capital did not play an important part, the small farmer who cultivated his fields himself with the aid only of his own family had a fair chance of holding his position against a neighbour little wealthier than himself. But his difficulties began when this rudimentary state of society was changed for one more complicated, and when capital was more and more in request in an improved state of agriculture and a more complicated society. Then came the necessity of borrowing, and the poorer men sank into dependence on the rich. Their position became worse when war or other calamities caused general distress, for small properties have less power of resistance than larger, and are swept away by a tide of adversity which may not affect the latter. Nay, rich people can profit by the distress of the poor; they can buy cheap what the others are obliged to sell, and thus, whilst small holdings disappear, large estates grow larger. In this manner small properties have, in different countries, been swallowed up, and they would gradually disappear altogether, if other social laws were not at work to counteract the excessive accumulation of landed property in the hands of a small class.[1]

Depression and disappearance of the smaller landowners.

But neither in Italy nor elsewhere was this natural law left to work out its results by its own inherent force alone. Cunning, chicanery, and downright violence concurred to accelerate its slow working. The poor peasants were deprived of their holdings sometimes under the pretext of a legal execution, sometimes by sheer force.[2]

Violence of the larger landowners.

[1] When law and custom combine, as in England, to prevent the breaking up of estates among the heirs of the owner, the process of accumulation goes on almost unchecked, and the consequence is the disappearance, all but total, of the small landowner.

[2] Sallust, *Jug.* 41: Interea parentes aut parvi liberi militum, uti quisque potentiori confinis erat, sedibus pellebantur. Sallust, *Hist. frag.* i. 41, 24: Expulsa agris plebes. Horat. *Od.* II. xviii. 23. Quinctil. *Declam.* 13. Seneca, *Epist.* 90, *De Benef.* viii. 10. Appian, *Bell. Civ.* 1, 7: οἱ πλούσιοι . . . ὅσα τε ἦν ἄλλα βραχέα πενήτων, τὰ μὲν ὠνούμενοι πειθοῖ, τὰ δὲ βίᾳ λαμβάνοντες πεδία μακρὰ ἀντὶ χωρίων ἐγεώργουν. *Ibid.* i. 18. How common such practices

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Whilst the owner was serving in the army, the farmwork was neglected, and the family became dependent upon money-lenders, who, under some pretext or other, drove them from house and home. Great numbers of small properties were thus seized by fraud or violence and swelled the estates of the rich. It is true, an attempt was made to prevent such outrages. A prætorian edict[1] was directed against all possessions acquired in this way, but the very necessity of issuing edicts of this sort proves the prevalence of violent and illegal ejections; for the prætors would not have troubled themselves with combating imaginary evils. Besides, such violent proceedings as those mentioned by Cicero[2] justify the inference that in earlier times things were much worse. If we take into consideration the disposition of the Romans to act with brutal force and heartlessness in the enforcement of real or pretended rights, their immoderate greed, avarice, and cupidity; if we remember the numerous stories of the cruel treatment of debtors, stories which, though fictitious, are based on the well-known character of the Roman creditor; if we bear in mind that a real and effective legal protection of the weak and humble against the powerful is the latest fruit of civilisation, and certainly was unknown in ancient Rome in spite of the institution of the tribunes of the people, we shall come to the conclusion that the number of ejectments must have been very great indeed, and we can understand that the diminution of the class of independent peasants was well calculated to inspire a farsighted and patriotic statesman with grave apprehension for the future.[3]

must have been in earlier times may be inferred from the fact that they occurred even in the time of Cicero and Horace.

[1] The possessorial edict of the prætor protected only those possessors who had acquired possession 'nec vi, nec clam, nec precario.' It ran thus: Unde tu illum vi deiecisti, aut familia tua, aut procurator tuus deiecit, quam ille nec vi, nec clam, nec precario a te possideret, eo illum restituas. Cicero, *Pro Cæcin.* xix. 30; *Pro Tullio*, 14. See Puchta, *Institutionen*, ii. § 225.

[2] See Cicero's speech *Pro Tullio*.

[3] The absorption of the small holdings of the peasantry by the large estates of the nobility is, as stated above, a phenomenon by no means confined to Rome or to antiquity. It can be observed in mediæval and modern Europe, and it

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Competition of slave with free labour.

The process of gradual absorption of small estates by the larger was favoured by the pernicious influence of slavery. It was by the employment of slaves that large farms could be worked profitably. Slaves were less expensive than free labourers. Besides, they were not subject to military service and could work without interruption. The competition of slave labour accordingly was ruinous to the free labourers, and it so happened that in the same proportion as the number of the latter was diminished by the drain of continual wars, the prisoners made in these wars swelled the number of the former. The general employment of slaves affected all kinds of industry, but none so much as agriculture. The style of farming which Cato practised and recommended in his writings was entirely based on slave labour and independent of free labour. Even his overseers and stewards were slaves. The operations of the farm were conducted with an exclusive view to the commercial profits of the owner, without the least attention to the well-being of the labouring slaves, who were fed and clothed just enough to keep them in health and vigour. It was impossible for a free peasant to maintain himself either as owner of land or as tenant of a farm, when this system had become general. He could not escape debt, and once in debt he was at the mercy of the money-lender, and even if he managed to retain possession of his estate, he was in a precarious position, and lost all feeling of pride and self-respect. A further cause of the accumulation of landed

can be traced, not only in the law books and chronicles, but in the poetical literature of various countries. The older English dramas are full of references to the illegal violence of the great nobles in their dealings with the peasantry. See Shakspere's second part of *King Henry VI.* i. 3: 'My supplication is against John Goodman, my lord Cardinal's man, for keeping my house and lands and wife and all from me.' Another petition is against the Duke of Suffolk for 'enclosing the commons of Melford.' Thomas Heywood, in the first part of *King Edward IV.* i. 2, makes Falconbridge say that he and the insurgents fight not 'for some common in the wilds of Kent, that's by some greedy cormorant enclosed.' In Sir Thomas More's *Utopia* there is a long explanation of the frequency of theft, from which we can infer that it was a general grievance of the poor in Henry VIII.'s time that the rich appropriated both common land and the land of small freeholders.

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property in the hands of the nobility was the circumstance that by custom and actual law[1] the men of senatorial rank were not allowed to engage in commercial pursuits. They were thus compelled to invest their capital chiefly in land.

Occupation of waste lands.

Whilst all social and political conditions were thus favourable to the substitution of large estates in the place of the small peasant properties of the old time, no change took place in that peculiar system of occupation of waste lands, sanctioned by law and custom. Even in the long struggle between the patricians and plebeians, when Rome first emerged from her modest territory to make conquests from her neighbours, a danger had been apprehended in the practice of occupation, and an attempt had been made to regulate and restrict it within certain limits. It seemed not desirable that a few men should step in and appropriate the lands, left for occupation, to their own exclusive use. The Licinian laws, therefore (366 B.C.),[2] fixed 500 jugera as the maximum which any Roman citizen should be allowed to claim. But it was soon discovered that laws are impotent to coerce deep-rooted passions and to remove evils which are the natural consequences of national habits and economical laws. The Licinian law was evaded and disregarded, and in course of time it fell into utter oblivion. The law intended to limit the possession of land was as useless as the laws against usury, or laws intended to fix the price of commodities; in short, as useless as any laws which undertake to divert capital from its natural channels into other channels devised by the wisdom of legislators. It was impossible for anyone to occupy waste lands without a certain capital at his disposal. The law, therefore, was unreasonable in demanding that the owners of capital should leave a portion of the land to be occupied by men who had no capital. If such a law could have been enforced, its consequence would have been to cut off to a certain extent the application of capital to the

[1] By the Lex Claudia, passed before the second Punic war. Vol. ii. p. 196.
[2] Vol. i. p. 314.

occupation and cultivation of waste lands. It would have prevented its cultivation by men of small means altogether. If the law had not this effect, it is because it was disregarded. The wealthy Romans occupied large tracts of waste land, *i.e.* they laid out the capital necessary for its cultivation, lending the money or letting the farms to small tenants, or farming larger portions with slave labour themselves. Thus was effected the change which we have already noticed. The small peasants, instead of rising into independent freeholders from the condition of borrowers and tenants, remained dependent on the capitalists, whose estates grew by degrees into *latifundia* of enormous extent, supporting no longer a free population but ever-growing masses of slaves.

Disregard of the peasantry by the nobles.

A remedy for the gradual destruction of the class of small freeholders might, perhaps, have been found if the Romans had continued on a large scale their old custom of planting colonies and assigning public lands to the new settlers.[1] But the opposition of the nobility to the assignments made by Caius Flaminius[2] shows that the government was shortsighted enough to look upon the improvement of the condition of the peasantry as an injury to themselves. Their greed and avarice overclouded their reason. They would not acknowledge that they were sowing seeds of evil which must spring up sooner or later. For the time everything looked well, and they did not care for the future. The Hannibalian war, which broke upon Italy soon after, silenced all minor wishes and grievances, and concentrated the energies of the republic on the one point of national defence.[3] Then came the days of rapid

[1] The colonies of Cremona, Placentia, Bononia, Aquileia, Potentia, Pisaurum, Mutina, Parma, and Luna, were established, not for the benefit of the colonists, but for military purposes.

[2] Vol. ii. p. 126.

[3] After its termination, a number of veterans received assignments of land in Italy. Liv. xxxi. 4, 1: Exitu huius anni cum de agris veterum militum relatum esset, qui ductu atque auspicio P. Scipionis in Africa bellum perfecissent, decreverunt patres, ut M. Junius prætor urbis, si ei videretur, decemviros agro Samniti Apuloque, quod eius publicum populi Romani esset, metiendo dividendoque crearet.

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conquests, of growing wealth, of universal dominion. Why should Roman politicians busy themselves with such paltry questions as the preservation or renewal of an independent peasantry?

The rural Italian population.

In considering the causes which led to the violent political disturbance of the two Gracchi we must not limit our inquiries to that part of the population which in a strictly legal sense was included in the body of Roman citizens. Besides them there were the so-called allies, spread over the whole of Italy, more numerous than the citizens themselves,[1] but not admitted to the full franchise. In a general way the relation of these Romans of a lower class to the citizens proper may be compared to that of the plebeians of old to the patricians, at the time when the rights of the two were not yet equalised. The Italians were really the backbone of Roman strength, they had to bear the greater portion of the public burthens, and yet they were excluded from the public rights and honours. This was a state of things which could not be permanent; it was too unnatural and unjust. But as was the case with the patricians in former times, the privileged Romans were prevented by pride and selfishness from surrendering their prerogatives by the admission of the great mass of their actual fellow-citizens to a legal equality with themselves. This obstinacy was the cause of a violent convulsion, which brought about by war and revolution the extension of the Roman franchise to all the nations of Italy.

Effects of the Hannibalian war.

The terrible devastations which afflicted Italy in the Hannibalian war had been most ruinous to the allies of Rome, especially those in the south of the peninsula. Whilst Latium, which contained the principal part of the old tribes of citizens, had suffered comparatively little, a

[1] According to Mommsen (*Röm. Gesch.* ii. 225) the numbers of Romans and Italian allies were as two to three. This calculation is based on the numbers of the census of 115 B.C. compared with that of 70 B.C. In this period the numbers rose from 400,000 to 900,000. The increase is explained by Mommsen by the admission of the allies to the Roman franchise in consequence of the Social war.

large portion of Samnium, Apulia, Campania, and more particularly of Lucania and Bruttium, was almost depopulated; and the Romans in punishing the unfaithful allies had acted with ruthless cruelty. Even during the war the Latin colonies were so exhausted that twelve of them declared themselves incapable of sending their regular annual contingents of troops. It is well known that this declaration was by no means inspired by treason or even by a want of patriotic feeling, but that it was the result of actual misery, the effect of the war. When at length peace was concluded, large districts were uncultivated and uninhabited. Roman veterans could be settled on them as colonists,[1] and Roman capitalists could occupy them.

Laws restricting the purchase of land.

But devastations of land and losses of human life are repaired in a comparatively short time, provided a nation is in a healthy state politically and economically, so that the restorative vigour of nature is not impeded by bad restrictive laws. This may be more especially expected in a country so fertile and with so genial a climate as Italy. But unfortunately the law which so restricted the right of buying and selling land that in every Italian community none but members of that community or Roman citizens could purchase or inherit,[2] by restricting free competition and giving an undue advantage to Roman citizens, was in itself sufficient to ruin the prosperity of every Italian town. This most injurious law operated incessantly and unobserved. Its effect was, that year after year larger quantities of the soil of Italy passed into the possession of Roman capitalists to be turned into large farms, in which the free Italian peasants were supplanted by gangs of agricultural slaves.[3]

[1] See above, p. 369, n. 3. [2] Vol. iv. p. 148.

[3] It is hardly surprising that this process was so little noticed. But all slow and gradual changes pass unobserved until some unexpected final result is attained which seems out of proportion with the force at work. Thus the steady accumulation of the wealth of the Church in all countries of Christian Europe was hardly counteracted by the secular government, except in England by the Statute of Mortmain, until the possessions of the clergy had grown out of all proportion, and invited the cupidity of the secular power. The slow effect of law and custom, by which land is transmitted to the eldest son, does

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Conflict of interests among the allies.

The occupation and cultivation of public lands situated in the territory of the allies was practised not only by Roman citizens, but also by Italians who were not Romans.[1] Thus the wealthier families of the allies were as much interested as the Roman nobility in maintaining the existing state of things, and looked with apprehension at any movement which tended to restore the provisions of the old Licinian law. In the various Italian towns there were accordingly the same conflicting interests of the rich and the poor as in Rome, and the same parties were opposed to each other, the one siding with Gracchus and favouring his social reform, the other supporting the Roman nobility in their opposition to the democratic agitation.

Grievances of the richer Italian families.

However, the richer Italian families, which formed a kind of nobility in the dependent communities, though they found their pecuniary interests bound up with those of the Roman nobility, were precisely that class among the allies which felt most intensely and resented most keenly their exclusion from the honours and dignities of the republic. They were not admitted to the great offices of state. Even the Roman senate was closed to them, and they could not expect the distinctions and the great advantages which military commands in the provinces conveyed. It is indeed probable that the Latin colonists were allowed to join in the speculations of the farmers of

not strike many observers as powerful in effecting a great change. Yet this law has helped to establish in England a state of things which is fraught with dangers, and may bring on a social or political revolution, unless remedial measures are adopted in time.

[1] Mommsen, *Röm. Gesch.* ii. 101: 'The public lands in Italy were not exclusively in the possession of Roman citizens; large tracts of them had been granted by popular or senatorial decrees to several allied communities for their exclusive use, other portions had been occupied by Latin citizens, lawfully or unlawfully.' I am inclined to say 'lawfully,' and I should not restrict the right to 'Latin citizens,' but rather include all Italian allies. There is no evidence to the contrary, and it seems natural that the government would prefer to see vast districts which had been laid waste by war cultivated by Italian allies, rather than they should remain unproductive. For after all it was not possible that the Roman nobility could monopolise all the land themselves.

the public revenue,[1] but it may be doubted if the other Italians also who were not Latins enjoyed the same privilege. At any rate they could not compete with Romans on equal terms, and as they had no votes to give or to sell in the Roman comitia, they were not able to make themselves respected by the men in power, who could grant or refuse favours and make the terms hard or easy.

Critical condition of the Roman commonwealth.

We have already spoken of the wrongs and indignities to which all Italian allies, rich as well as poor, were exposed at the hands of Roman officials.[2] All their legal disabilities and all the disadvantages and mortifications to which they were liable were the necessary consequences of one primary cause, their exclusion from the full Roman citizenship. It was generally felt that this exclusion could not be maintained much longer. The government of the republic could not always be carried on for the benefit of a ruling minority. The whole moral and economical condition of society was undermined and a crisis inevitable, which by restoring the equilibrium between the ruling state and the masses of the subject populations laid a new basis on which the Empire could be established with equal rights and equal obligations for all.

[1] This is Mommsen's opinion, *Röm. Gesch.* i. 423.

[2] Above, p. 193 ff.

CHAPTER II.

TIBERIUS GRACCHUS.

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Lack of adequate popular leaders.

ONE of the most melancholy and ominous features which we mark in the decay of the Roman polity is the lack of a party and of leaders with the gift to discover the disease and the will to cure it. The class of men from whose ranks such reformers might have sprung were entirely under the influence of the nobility in their acts and in their convictions; and the few Roman soldiers and statesmen who stood out from the mass of mediocrity had either no taste or no inclination to engage in any movement which went beyond the aims and calculations of their own day. They either devoted themselves, like the Scipios, to the task of enhancing the greatness of their own families, or laboured in field and council to increase the preponderance of the republic over other states and at the same time to amass riches for themselves; or they bewailed, like Cato, the corruption of morals and prated about the virtues of the past. Occasionally, it is true, timid attempts were made, and on a small scale, to abolish flagrant abuses, as by the laws relating to the ballot and by the institution of permanent penal courts of justice for the protection of the provinces; but the idea of a bold and thorough reform was in itself alarming to the public men of Rome.

Alleged reforms of C. Licinius Crassus.

It appears that C. Licinius Crassus, who was tribune of the people in the year 145 B.C., gave the signal for a new movement. But we know too little about him to determine whether he really proposed a law for the distribution of land in lots of seven jugera among the

poor populations.[1] It is certain that this proposal if made was not accepted, and that another for the election of priests by the people received the same treatment. Crassus also exhibited his democratic tendencies when delivering speeches in public, for he was the first of all Roman orators who, when speaking on the public platform, turned not to the comitium, where the senators and nobles were wont to stand, but to the forum, which was occupied by the great mass of humbler citizens.[2]

Proposed agrarian law of C. Lælius.

A less resolute reformer was C. Lælius. We are told that he, the friend and dependent of the Scipios, had conceived a plan for imparting new vigour to the agricultural classes of Italy by distributing the public lands then in the possession of occupiers, but that, yielding to the entreaties of his friends, he abandoned his daring designs and was in consequence surnamed 'the wise.'[3] When the last echoes of this faint, feeble warning seemed to have died away, the noble families of Rome, strong and united, may well have thought that they could now leisurely enjoy the good things which the possession of power secured to them. All the great tasks which they had undertaken while directing the affairs of their country had been successfully accomplished, though at the cost of many a desperate struggle and of terrific sacrifices. The mighty kingdoms of the East were humbled and destroyed; Carthage, their ancient rival, lay in ruins; and their dominion in Italy extended as far as the Alps. Even in Spain the hardy and patriotic natives, after a long and fierce fight for their independence, were crushed, and the greater portion of that country acknowledged the sway of Rome, which now extended almost to the Atlantic Ocean, while the small town of Numantia, which still refused to bow its neck under the Roman yoke, was besieged by an overwhelming force commanded by the younger Scipio, the

[1] The decision depends on the interpretation of the difficult passages, Varro *de R. R.* i. 2, 9, concerning which see Pauly, *Real Lexicon*, iv. 1056.

[2] Cicero, *de Amic.* 25, 96.

[3] Plut. *Tib. Gracch.* 8.

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conqueror of Carthage, whose speedy victory might be looked upon as certain.

Election of Tiberius Sempronius Gracchus as one of the ten tribunes.

Amid this seeming calm burst a sudden and unexpected storm, which threatened at a single stroke to lay low the proud and powerful nobility of Rome. In the year 133 B.C. there was elected, among the ten tribunes of the people, Tiberius Sempronius Gracchus, a young man belonging to a most illustrious family, which more than a hundred years before had attained to the highest honours of the republic.[1] During the war with Hannibal, and in the time of deepest trouble, soon after the battle of Cannæ, a Tiberius Sempronius Gracchus was elected consul by the people for the year 215 B.C., and later on commanded, as proconsul, an army of slaves, and bore himself well until he was slain in an ambush prepared for him by the Carthaginian sub-commander Mago.[2]

The career of the tribune's father.

A namesake of this Ti. Gracchus, probably his grandson, whose active participation in public life extended from the Syrian to the last Punic war, and who was consequently a contemporary of Cato, was father to the great tribune. Of this man we know just so much as will suffice to mark in outline the usual career of a prominent member of the nobility. He served on horseback in the bodyguard of the consul L. Scipio Asiaticus, during his campaign in Asia[3] (190 B.C.). Three years later we find him, as tribune of the people, interposing in behalf of L. Scipio, who had been condemned to a fine, and so preventing the execution of the sentence.[4] We are informed that Gracchus acted thus, although he was personally on bad terms with Scipio; but this may be merely a rumour invented for the purpose of imparting to the act of Gracchus an air of generosity. If enmity really existed, it is certain that an entire reconciliation took place soon after this event, for we find the houses of the Scipios and the Sempronian

[1] Other branches of the gens Sempronia had previously acquired nobility. The Sempronii Atratini were patricians, and are frequently mentioned in the fasti during the early days of the republic (497 B.C.). Plebeian branches were the Sempronii Sophi, Tuditani, Blæsi, Longi, Rutili, Rufi, and the Gracchi.

[2] Vol. ii. pp. 291, 329. [3] Vol. iii. chap. ii. [4] Above, p. 329.

Gracchi henceforth closely allied and intermarried. The narrative[1] relating how Scipio promised his daughter in marriage to Gracchus at a feast, unknown to his wife, has, it is true, been erroneously applied to the men in question, and belongs to the following generation; but our Gracchus did marry Scipio's daughter after her father's death, with the consent of her relatives,[2] and the career and political activity of Gracchus seem to have been throughout in accordance with Scipionic views. He was repeatedly entrusted with missions to the East (185, 165, 161 B.C.), being particularly qualified for that office, in addition to other accomplishments, by his thorough command of the Greek language, which he spoke with such ease and fluency that he was able to appear on the public platform as an orator at Rhodes.[3] He was successively elected to the offices of triumvir for the purpose of founding the civic colony of Saturnia, in Etruria (183 B.C.), of ædile (182 B.C.), and of prætor (180 B.C.) The splendour of the public games celebrated during his ædileship was not less remarkable than the recklessness with which he cast a share of the expenses on Italy and the provinces.[4] As prætor in Spain he succeeded, after two years of warfare, marked by many a victory,[5] and the taking one hundred and three, or, according to another account, three hundred cities,[6] in leaving behind him a name loved and respected by the native tribes on account of the treaties which he concluded with them, and which formed the basis of their subsequent legal relations to Rome. He

[1] Liv. xxxviii. 57.

[2] Plutarch, *Tib. Gracch.* 1 and 4, below p. 380, note 4.

[3] Cicero, Brutus, 79.

[4] Liv. xl. 44, 10. The senate was in consequence obliged to reduce the cost of the games: decreverat id senatus propter effusos sumptus, factos in ludos Ti. Sempronii ædilis, qui graves non modo Italiæ ac sociis Latini nominis, sed etiam provinciis externis fuerant.

[5] Vol. iii. p. 377.

[6] Vol. iii. p. 380, note 1. The number 103 is given by Liv. xl. 49, 1; Strabo, iii. 4, 13, on Polybius' authority, gives 300. One of these figures has probably been corrupted into the other. The manifest partiality with which Polybius speaks of Gracchus is explained by the intimacy of both with the Scipionic family.

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returned to Rome in triumph, bringing forty thousand pounds of silver into the treasury, and now his election to the consulship was secured. He filled this office in the year 177 B.C., and was appointed to the province of Sardinia, where he was for two years engaged in a fierce war with the insurgents, and took so many prisoners in battle, that the cheapness of Sardinian slaves became proverbial in Rome. In the inscription affixed to the painting which for his own glorification he dedicated[1] in the temple of Mater Matuta, Gracchus boasted of having slain or captured eighty thousand enemies. A second triumph was granted him, and a further reward for his services was his election to the highest post of honour that any Roman could aspire to, namely, the censorship, which office he filled together with his colleague of the consulate, C. Claudius Pulcher. His tenure of this office was rendered memorable by his transformation of the tribes in the spirit of aristocratic government,[2] while he erected to himself a monument in the form of the Basilica Sempronia, the third edifice of the kind in Rome. In the year 163 he was again made consul, so that he was one of the few who could boast of having twice occupied the highest office, and of having twice triumphed. Of his latter days we know nothing, and they were probably devoted to the benefit of his family. The husband of a highly intellectual wife, whom, according to a pathetic story, he loved so dearly that he had no desire to outlive her,[3] and himself conversant in Greek literature, we may be sure that he did his utmost to give his children a first-class education. Of his numerous family, however, only three survived their father, the renowned brothers Tiberius and Caius, besides a sister who was married to the younger Scipio, the son of the conqueror of Macedonia, Lucius Æmilius Paullus.

Character of Gracchus the censor.

Summing up the principal features in the career of Gracchus the censor, we cannot fail to see in him a striking specimen of a genuine aristocrat, a man who clung firmly

[1] Vol. iii. p. 426, note 2.
[2] Above, p. 38.
[3] Plutarch, *Tib. Gracch.* 4.

to his hereditary class and all its principles, and who would have been the last to think of tampering with the foundation on which the greatness of the aristocracy was built up. Of such men there was no lack. They were just equal to the ordinary public work, and are admirably adapted to characterise the class to which they belonged.

The mother of the tribunes, on the other hand, was a remarkable woman, and not an ordinary Roman matron. She has generally received credit for being the person to whom her sons owed their training and education, in particular that command of the Latin tongue which made them eminent as orators.[1] But they probably owed to their mother more than such secondary advantages of education. Romans in general were not given to ideal ways of thinking; and this gift, which the Gracchi possessed in a high degree, was probably inherited from their high-souled and large-minded mother. From her, and not from their father, they had received that sensitive nature and that sympathy with the weak and suffering, which animated their political action.

The mother of Tiberius and Caius Gracchus.

But if their ideal enthusiasm was their mother's legacy, it was nourished and further developed by education. We hear of two Greek masters who had a lasting influence on the two Gracchi, the stoic Blossius from Cumæ, and the rhetor Diophanes from Mitylene. Since Plato the Greek philosophers had studiously prosecuted their speculations concerning the best form of polity, without paying much regard to existing institutions. That the state had a right to regulate family life, to command and dispose of property as it thought best for the common weal, was for them an axiom beyond dispute; and amid the general decay of old institutions their theories had first been in some measure adopted, especially with regard to landed property, by generous princes like Agis and Kleomenes of

Education of the Gracchi.

[1] Cic. *Brut.* 27, 104. Fuit Ti. Gracchus diligentia matris a puero doctus et Græcis literis eruditus, *ib.* 58, 211. Quinctil. I. i. 6: Gracchorum eloquentiæ multum contulisse accepimus Corneliam matrem.

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Sparta, or by tyrants such as Machanidas and Nabis. Such doctrines and models appear to have fostered and stimulated in Cornelia's youthful sons the boldness which prompted them, in defiance of all Roman conservatism, to rebuild the state on quite a new foundation.[1]

Early years of Tiberius Gracchus.

Tiberius was but a youth of sixteen when he accompanied P. Scipio the younger, the husband of his sister, to Africa (147 B.C.), and so enjoyed immediate intercourse with the most eminent man of his time, and his friends C. Lælius, Panætius, Polybius, and others. He had also opportunities of showing his personal courage, in the taking of the suburb Megara[2] by assault, when he and Fannius are said to have been the first on the city-wall. Having returned to Rome, he was, while yet a youth, received into the corporation of augurs, and so far succeeded in winning the affection of the consular Appius Claudius Pulcher,[3] that the consular's daughter was promised to him in marriage.[4] Prospects of a brilliant political career were of course open to the young man, but the beginning seemed ominous, when he became quæstor and in that capacity accompanied the unfortunate consul, C. Hostilius Mancinus, to Numantia, and shared the fate of the Roman army and general, who became prisoners of war. Mainly through his agency the treaty was concluded which

[1] Plutarch, *Tib. Gracch.* 8: Ὁ Τιβέριος δὲ δήμαρχος ἀποδειχθεὶς εὐθὺς ἐπ' αὐτὴν ὥρμησε τὴν πρᾶξιν, ὡς μὲν οἱ πλεῖστοι λέγουσι, Διοφάνου τοῦ ῥήτορος καὶ Βλοσσίου τοῦ φιλοσόφου παρορμησάντων αὐτόν. This important evidence has hitherto received but little attention.

[2] Vol. iii. p. 355.

[3] The same who wrongfully made war against the Salæsians (143 B.C. vol. iii. p. 423), and who, in spite of the senate and the tribunes, celebrated a triumph. We cannot think that his influence on Tiberius was wholesome, or that he was likely to inculcate prudence. His enmity with Scipio Æmilianus and the reigning clique of the nobility dated from the time when he contested the election of censors against Scipio and was beaten (142 B.C. Plutarch, *Apophthegm. Scip. Min.* 9.)

[4] Plut. *Tib. Gracch.* 4. According to Livy, xxxviii. 57, P. Scipio Africanus promised his daughter Cornelia, the mother of the Gracchi, in marriage, unknown to his wife, to the father of the Gracchi. But that this version is incorrect is plain from a comparison of the dates (for Cornelia cannot have been old enough before the death of Africanus, 183 B.C.); besides, Polybius is in favour of Plutarch's version; see above, p. 377.

promised the Numantines peace in return for the liberation of the captive army; and when this treaty was repudiated, notwithstanding the vehement protest of Tiberius Gracchus, he narrowly escaped being surrendered to the Numantines, together with the consul Mancinus.[1] It is not unlikely that such scandalous perfidy on the part of the senate enraged a high-spirited and generous man, who had pledged his faith for the execution of the bond; and if he had already arrived at the conclusion that the system of government then prevailing in Rome was ripe for destruction, such an experience as this could not fail to confirm him in that belief. But it is surely a mistake to impute all his subsequent line of action to resentment or to personal fear, and thus to deny him all credit for pure and disinterested motives.[2]

Sincerity and zeal of Tiberius Gracchus.

He was evidently deeply moved by the lamentable condition to which the bulk of the Italian peasantry had been reduced. On his way to Spain he saw in Etruria an instance of the terrible desolation of that fertile country; for only foreign slaves, instead of freeborn peasants, were employed in agriculture. Doubtless he was acquainted with the plan, which C. Lælius had conceived and then

[1] Vol. iii. p. 399.

[2] This is done by Cicero, who is systematically unfair in everything he says of the Gracchi, *De Harusp. respons.* xx. 43: Ti. Graccho invidia Numantini fœderis, cui feriendo quæstor C. Mancini consulis quum esset, interfuerat, et in eo fœdere improbando senatus severitas dolori et timori fuit; istaque res illum fortem et clarum virum a gravitate patrum desciscere coegit. *Brut.* 27, 103: Eorum alter (Ti. Gracchus) propter turbulentissimum tribunatum, ad quem ex invidia fœderis Numantini bonis iratus accesserat, ab ipsa re publica est interfectus. Vellejus seems to incline to the same opinion, ii. 2: Ti. Gracchus . . . . graviter ferens aliquid a se factum infirmari . . . . tribunus plebis creatur . . . . summa imis miscuit. Florus, iii. 14, leaves the motives of Gracchus doubtful. Tiberius sive Mancinianæ deditionis, quia sponsor fœderis fuerat, contagium timens et inde popularis, sive æquo et bono ductus, quia depulsam agris suis plebem miseratus est, ne populus gentium victor orbisque possessor laribus et focis suis exularet, quacunque mente rem ausus ingentem est. Quinctilian. VII. iv. 13, expresses himself doubtfully: Gracchus reus fœderis Numantini, cuius metu leges populares tulisse in tribunatu videtur. According to Dio Cassius (frag. 83) Tiberius was moved by anything but common ambition.

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abandoned, of establishing a new peasantry by the distribution of state lands, and his bold, enterprising nature prompted him to take up with youthful enthusiasm the plan which older and less intrepid men had shrunk from carrying out. So it came to pass that Gracchus, in the face of fearful obstacles, and almost unsupported by any party, attempted single-handed his hopeless attack on the stronghold of the Roman nobility.

Plans of Gracchus as tribune.

Tiberius Gracchus was elected tribune in the year 133 B.C., probably without having previously made his plans known to the public, or having on the strength of his projected reforms secured the suffrages of the people;[1] for we find among his colleagues no resolute or outspoken supporters of his policy; but, on the contrary, several bitter adversaries. When, soon after his accession to office, he disclosed his plans, the nobility were no less taken by surprise than the people. He did not think it necessary to adhere to the custom which had then been in use for some centuries, and first to lay his legislative schemes before the senate, so that he might, with the approval of the senate, bring them before the people. Probably he knew that such a proceeding would be useless, since he had no strong party to support him in the senate. Only his father-in-law, Appius Claudius, and the father-in-law of his brother, P. Licinius Crassus Mucianus, besides the renowned jurist P. Mucius Scævola,[2] were on

[1] Plutarch (*Tib. Gracchus*, 8) relates that Gracchus was urged to his reform by anonymous letters addressed to him, which were left in public places where they would be sure to be found, and which called upon him to restore the public land to the poor. This story, which is evidently identical with the one related of Brutus, seems to be nothing but literary gossip. Anonymous messages of the kind could not have been sent to the youthful Tiberius, unless it had been generally known in Rome, even before this time, that his policy was directed towards the objects here mentioned; *i.e.* unless he had already declared what his feelings and opinions were. The story, therefore, moves in a vicious circle.

[2] Though it is stated that Scævola approved of the Sempronian land law from a legal point of view, we may well doubt whether he approved of its policy. The lawyer and the statesman were probably of different opinions. In his latter capacity it does not appear that Scævola did anything to support the measure, which from a merely technical point of view he may have considered unassailable.

his side, evidently more a family clique than a political party. The assent of the Scipionic party, especially of his brother-in-law P. Scipio Æmilianus, was not to be counted on, and that was perhaps one reason why he hastened to carry his reform before the return of Scipio from Spain.[1]

Question of the prudence of Gracchus.

Before we proceed to discuss the reform of Gracchus in detail, we cannot help asking whether it was prudent in such a youthful statesman, at the very outset of his career, to be so completely carried away by enthusiasm and confidence in his cause as to undertake single-handed a struggle, necessarily so hard and formidable, and to throw down the gauntlet to the entire nobility by attempting to carry his schemes through a vote of the people, and without consulting the senate. The event proved that if his action was not wrong, it was at least imprudent, and that reforms are but short-lived when they have been wrung from the actual rulers of the state by means of a sudden and unexpected attack. Legally, Tiberius was in the right. The law permitted him, without the leave of the senators, to bring any proposal directly before the people; but in matters of policy the letter of the law must always be supported by actually existing custom. Political questions, though originating on the basis of right, are still in the end finally settled by might.[2]

Proposals of Gracchus.

The proposals which Tiberius submitted to the comitia tributa for approval were such that they could not fail to be unanimously condemned by the nobility; for they virtually implied a renewal of the almost forgotten and long disregarded agrarian law of Licinius, which enacted that no

[1] Many distinct and emphatic assertions have been made by Mommsen and others about a so-called reform party preceding the Gracchi. If by such a party the combined action of several men with a following in the mass of the people is meant, we must unhesitatingly declare that no vestige of it is to be found. A few isolated liberal ideas, perceptible here and there, are far from constituting a reform party.

[2] Appian, *Bell. Civ.* i. 27, pronounces at the same time Tiberius' praise and condemnation by calling the law νόμος ἄριστος καὶ ὠφελιμώτατος εἰ ἐδύνατο πραχθῆναι.

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individual citizen should possess more than five hundred jugera of the public land. In order to pay some regard to the economical changes which two hundred years had effected in respect to wealth and the mode of living, he added a clause permitting further the occupation of two hundred and fifty jugera for each grown-up son. To temper the harshness of the measure to those who would be obliged to forfeit a portion of their property, a clause was inserted acknowledging whatever portion they retained to be their freehold property, and that the state should for the future give up all claim to the same.[1] Such land as had been acquired by individuals in excess of the said limit was to be resumed by the state, and distributed among the poor population in small allotments as inalienable property, subject to the payment of an annual tax. With a view to carrying this measure into effect, a committee of three men (triumvirs) was to be annually elected, whose labours were to begin with the arduous task of deciding what lands belonged to the state as ager publicus, and what lands were *bonâ fide* private property, and therefore exempt from the proposed measure.

Objects of these proposals.

In order fully to estimate the consequences involved in this proposal, we must first of all decide whether it applied only to such public land as had been occupied by Roman citizens, or whether the Italian allies who had tracts of state land in their possession were equally to be affected; moreover, whether only the poor of Rome were to profit by the proposed distribution of land, or whether any Italian allies were also to participate in the benefit. Appian gives us clearly to understand that the measure in question was intended to apply without distinction to all the inhabitants of Italy,[2] and this is almost a matter

[1] Appian, *Bell. Civ.* i. 11: ἐκέλευε (ὁ Τιβέριος) τοὺς πλουσίους . . . μισθὸν τῆς πεπονημένης ἐξεργασίας αὐτάρκη φερομένους τὴν ἐξαίρετον ἄνευ τιμῆς κτῆσιν ἐς ἀεὶ βέβαιον ἑκάστῳ πεντακοσίων πλέθρων, καὶ παισὶ, οἷς εἰσὶ παῖδες ἑκάστῳ καὶ τούτων τὰ ἡμίσεα.

[2] Appian, *Bell. Civ.* i. 9: Τιβέριος Γράκχος . . . . δημαρχῶν ἐσεμνολόγησε περὶ τοῦ Ἰταλικοῦ γένους ὡς εὐπολεμωτάτου τε καὶ συγγενοῦς, φθειρομένου δὲ κατ'

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of course, for else the result could not have been what Gracchus intended, namely to people Italy with a numerous and independent peasantry. Here as elsewhere the Gracchi display their generous sympathy with the suffering Italians, the aim of Caius certainly, if not of Tiberius, being to give them the rights of Roman citizens.[1]

Uncertainty as to details.

We are very imperfectly informed on many points of Tiberius' agrarian law. It is by no means clear what arrangement was contemplated with regard to the cattle and plant belonging to the land which was to be ceded to the state, whether all this was to be handed over to the new-comers, and whether with or without indemnity.[2] Then again, what was to become of the numerous slaves by whose labour agriculture had been hitherto carried on? Their masters would of course no longer have any employ-

ὀλίγον ἐς ἀπορίαν καὶ ὀλιγανδρίαν. Appian, *Bell. Civ.* 13: Γράκχος δὲ μεγαλαυχούμενος ἐπὶ τῷ νόμῳ . . . . οἷα δὴ κτίστης οὐ μιᾶς πόλεως οὐδ' ἑνὸς γένους ἀλλὰ πάντων ὅσα ἐν Ἰταλίᾳ ἔθνη, ἐς τὴν οἰκίαν παρεπέμπετο.

[1] This is the view adopted by Mommsen, *Röm. Gesch.* ii. p. 88. In opposition to it, Lange (*Röm. Alterth.* iii. p. 10) maintains that Gracchus made no provision for the Latins and the Italian allies. He quotes in proof of this opinion a passage from Cicero *de Republ.* iii. 29, 41, the bearing of which on the agrarian law of Tiberius Gracchus is by no means evident. Lange asserts, moreover, that the ἄποικοι and the πόλεις ἰσοπολίτιδες mentioned by Appian, *Bell. Civ.* i. 10, must be understood to be colonies and municipia of Roman citizens, which is a mere guess. He also thinks that Tiberius would never have succeeded in obtaining from the assembly of the Roman people the assent to a law by which the Latins and allies obtained the same advantages as the Roman citizens. There is some force in the last argument. We cannot think that it was by any means easy for Tiberius to persuade the selfish Romans to accept a law not exclusively intended for their own advantage. By his liberality to the Italians he made himself to a certain extent unpopular in Rome, and his enemies would be likely to avail themselves of the odium he thus incurred for irritating a portion of the people, and for representing him as a dangerous friend. If Tiberius reckoned on the sense and generosity of the Romans, he made a serious mistake; but, if we admit this, we need not on that account doubt that he proposed and carried his measure.

[2] The latter alternative is hardly conceivable. But a full compensation of the old owners would require enormous sums. When the kingdom of Pergamum and the treasures of Attalus were at the disposal of the Roman government, it was possible to get over this difficulty. Gracchus proposed to apply the proceeds of the Attalian legacy towards stocking the land which was to be distributed. But we should much like to know how he had intended to deal with this question in his original proposal, which was made before he could reckon on the windfall from Pergamum.

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ment for them, and could not possibly continue to feed them. If Tiberius intended to set them at liberty and convert them into free labourers, then where was the benefit to poor citizens? and yet it must have been very difficult to find any occupation for them except in agriculture.[1] We must bear in mind that the scheme of Tiberius Gracchus was propounded in the midst of the disastrous Sicilian slave war, in which the whole island was wasted with fire and sword, and several Roman armies perished in succession. Tiberius cannot under these circumstances have neglected to make some provision for the Italian slaves whom he proposed to replace by free labourers.

Difficulties in the way of the measure.

If the law proposed, as we presume it did, to provide the entire mass of poor and unemployed citizens with land, it must also have dealt with the contingency that the public land at the disposal of the state might not suffice, and in that case it was necessary to make some provision for those who could not be accommodated out of the public lands. A further difficulty lay in the necessity of providing that the plots of land to be allotted should be inalienable. In what way can Tiberius have hoped legally to carry out this design? Did he imagine that a mere declaration to that effect would suffice; or did he think that the new peasantry would never wish or be compelled to sell? What justification could there be for any such hope as that? It was surely not to be expected that the metropolitan proletarians would find agricultural work altogether suited to their taste, or highly profitable. Neither the state of agriculture in Italy, nor the nature and antecedents of the new colonists could justify any such supposition. What was to be done if a new settler found it advantageous or necessary to sell his newly acquired property? Was that to be declared an illegal proceeding, and was he thus to be fettered to the soil, or in other words to forfeit his freedom? These are questions to which we find no answer

[1] Compare above, p. 355.

in our sources of information. But however these difficulties may have been met, we do not hesitate to condemn as a failure any attempt to fix the tenure of land in perpetuity by declaring it to be inalienable, just as any other legal regulation must end in failure which attempts to impose arbitrary and unnatural restrictions on the economical dealings of society.[1] This feature in the law of Tiberius was at the same time an admission of its inability to create a free and independent peasantry that was likely to endure.

Difficulties caused by want of registering.

A source of embarrassment scarcely less formidable than those inherent in the law itself was found in ascertaining the facts on which the operation of the law rested. Registers and surveys, from which the extent of the public lands might have been determined, did not exist, and quite in accordance with the wretched management of Roman finances, the regulation requiring all occupiers to pay a fixed rent or tax for the use of public land had long since been forgotten, and thus the most natural and palpable method of keeping up the distinction between freehold and public land had been neglected. It had long since become customary for landholders to treat the public land in their possession just as their own private property, to draw no line between the two, and in respect of cultivation, purchase, sale, or bequest, to regard both as belonging to one and the same description of property. How was it possible, when this state of things had become firmly established and generally accepted, to draw the distinction which the law required? Those who were commissioned with this work had a task that every prudent statesman would shrink from. One might well have doubted whether the entire reform was not in danger of being frustrated by this one obstacle. This, however, was merely a practical difficulty, and did not affect the legal

[1] The restriction soon proved unavailing and was repealed. Appian, *Bell. Civ.* i. 27. Compare what has been said above, p. 371, on the vanity of the attempt to control by laws and punishments the development of industrial and commercial enterprise.

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or political aspect of the law. The main question for Gracchus must have been whether his law was just, and whether it was prudent, and his opponents could only hope to find a hearing by impugning its justice or its expediency.

Legality of the reforms of Gracchus.

As far as formal law was concerned, there can be no doubt that the proposal of Gracchus was within its limits. The public land belonged to the state, and whoever had taken possession of any portion of it must have known that the state could at any time lay claim to it. This right of the state never lapsed,[1] so that the public could resume not only all those parts which private persons had taken possession of in excess of the legal limit, the five hundred jugera, but everything down to the last glebe. If, instead of doing this, the state demanded for public purposes only that portion which individuals had wrongfully usurped in opposition to the Licinian law, it did not even stretch its rightful claims to the utmost limit, and the advocates of this law might assert that it contained a generous concession in allowing individuals to retain possession of two hundred and fifty jugera for each grown-up son. This was doubtless the view held by Tiberius and his legal advisers and friends, Mucius Scævola and Licinius Crassus.

Revival of obsolete laws.

But the question here at stake was not one to be decided according to the rigid letter of the law. In order correctly to interpret and to apply a law, it will not suffice merely to explain the exact meaning of the words in which it is expressed; for every law is framed to suit a certain time and a certain order of things, and when these are materially changed, the law is no longer fully applicable, and should either be adapted to the changed circumstances by suitable interpretation and alterations, or

[1] Cicero, *de Leg. Agr.* iii. 3, especially §11: Hoc tribunus plebis promulgare ausus est, ut quod quisque post Marium et Carbonem consules possidebat, id eo iure teneret, ut qui optimo privatum. Etiamne si vi eiecit? etiamne si clam, si precario venit in possessionem? Ergo hac lege ius civile, causæ possessionum, prætorum interdicta tollentur. Frontin. *de Controv. Agror.* p. 50. Aggenus, p. 82: Juris periti negant illum solum, quod solum populi Romani cœpit esse, ullo modo usu capi a quoquam mortalium posse.

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it should be repealed. Whether this is accomplished by a formal act of legislation, or by use and custom, is immaterial. The abolition of a law by long-continued neglect is also an act of legislation, being in fact the same process to which customary law owes its origin, and which may just as well show itself in a negative as in a positive sense—*i.e.* which may just as well abolish existing laws as make new laws. Now there can be not the slightest doubt but that the Licinian law, dating from the year 366 B.C., must in the time of Gracchus—*i.e.* more than two hundred years later—have been looked upon as entirely obsolete and of no force; nay, it is even possible that in the generation then living, it was only known to students of antiquity, and that those who were violating its provisions had not the faintest notion that their proceedings were illegal.[1] Under these circumstances, to bring forth and to give new life and force to the obsolete law which for many generations had lain unheeded and neglected in the dust of the archives, was a proceeding only to be justified if the old law still suited the new circumstances, and if it violated no rights or titles which had been acquired in good faith.

Inapplicability of the Licinian laws to the changed condition of Italy.

Such, however, was not the case. On the contrary, the difference between the fourth and the second century B.C. in the material condition of society was so vast, that the possession of a property, which in the former age would

[1] The Licinian law, *de modo agri*, seems never to have had much practical importance, and in fact to have been almost a dead letter from the first. Appian, *Bell. Civ.* i. 8: φροντὶς δ' οὐδεμία ἦν οὔτε τῶν νόμων οὔτε τῶν ὅρκων, ἀλλ' οἵτινες καὶ ἐδόκουν φροντίσαι, τὴν γῆν ἐς τοὺς οἰκείους ἐπὶ ὑποκρίσει διένεμον, οἱ δὲ πολλοὶ τέλεον κατεφρόνουν. Whilst we often hear of fines inflicted for the transgression of the law of pasturage (*scriptura*), no notice has been preserved of any actual enforcement of the land law, unless the allusion of Cato the censor in one of his speeches (Cato's Fragments, ed. Jordan, p. 24) can be taken as a proof of it. The passage runs thus:—eaque tandem lex est tam acerba quæ dicat . . . . si quis plus quingenta iugera habere voluerit, tanta pœna esto, si quis maiorem pecuum numerum habere voluerit tantum damnas esto. Cato's meaning is not quite clear, owing to the fragmentary condition of the text of his speech. His expression 'habere' instead of 'possidere,' is not technically correct, nor is it certain whether he refers to the law as one actually in existence, or as one of a bygone age.

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have passed for great wealth, scarcely raised the owner above the middle classes, now that the immense influx of wealth into Rome had made its nobility the owners of princely fortunes. What were five hundred jugera to such men as the Æmilii, the Valerii, the various branches of the Cornelii, and other families? To tell these men that in the days of Camillus and the Samnite wars five hundred jugera signified great wealth was little better than mockery, and they might complain with just indignation of the tribune who was endeavouring to gauge the present with a measure which belonged to a primitive and bygone age, the infancy of the Roman state. Nor could such complaints be met by asserting that the proposed law affected only the tenure of state land by individuals, and did not interfere with private property, for practically no distinction was made between those two forms of property, and there might very probably be wealthy men, the bulk of whose property was invested in public land, and who would consequently, if the new law came into force, sustain a ruinous loss. How could a Roman of consular dignity live in a manner befitting his station if he was thus reduced to the level of a peasant?

Private expenditure on public lands.

It was quite natural that the Roman landowners should unanimously oppose the suggested law, and stigmatise it as a scheme for the purpose of plundering honestly gotten wealth. The long-continued non-observance of the Licinian law had had the effect of placing the occupied state land on precisely the same footing as private property. By purchase, bequest, and mortgage, it had passed from hand to hand, and capital had been invested thereon in a variety of ways. Waste tracts had been converted into fertile fields, pastures, and plantations; farm houses and country mansions had been built; gardens and pleasure grounds laid out; improvements of every kind effected by successive occupiers had enhanced the original value of the land a hundredfold. Who could, on the strength of an old and obsolete regulation, affirm that the present holders of such lands, who had undoubtedly

acted in good faith, had not a just claim to the benefit of the investments they had made? The revival of the old law was, in point of fact, nothing but an act of confiscation, and was felt to be such. When in the year 172 B.C. unlawful encroachments on common land in Campania were cancelled for the benefit of the treasury, the dispossessed occupiers received an indemnity, although their tenure had scarcely been of forty years' duration, and was not based on any rightful claim or title. Was it then just or reasonable to ignore a more than five times longer tenure, as conveying no title to the land whatever?

Question of indemnity for existing occupiers of public lands.

Even Gracchus seems to have felt this injustice, and therefore inserted in his proposal a clause to the effect that the ejected landholders should be indemnified for money laid out on the land. But, firstly, this clause was inadequate, for it offered no indemnity for purchase money of the land itself; and, secondly, it could not be more than a delusion, for no ways and means were or could be provided for raising the requisite funds; and, finally, the clause was dropped in the course of the discussion of the bill, so that the full injustice of the law stood exposed before the constitutional powers of the republic.

Opposition of the senate.

The senate saw from the first that to employ, as they were wont to do, friendly counsel and personal influence in negotiating with a fanatical reformer like Tiberius Gracchus, would be fruitless. They therefore resorted to intercession, which means of obstruction the Roman legislators had purposely provided in order to frustrate one-sided, rash, or dangerous action on the part of the magistrates, or to ensure more careful deliberation. The right of intercession was an essential feature of the republican constitution, a feature so indispensable that the steady and regular working of the constitution was in a great measure dependent on that right. The frustration or even the postponement of one-sided or illegal action on the part of an official afforded such a guarantee against the abuse of magisterial power, that the law could safely entrust the different magistrates with an authority that

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might have seemed excessive and more monarchical than republican. It had an effect on the deliberations and decisions of the various constitutional powers, especially on the legislative power of the people, similar to that which is produced in modern times by the practice of repeated and successive deliberations on a proposed law in one or even two houses of the legislature. Every official in Rome knew and felt that beside him or over him stood a controlling colleague, and this knowledge in itself was in most cases sufficient to enjoin prudence and moderation. In countless instances the efficacy and prudence of this constitutional check had been proved, and the senate was strictly within its right in having recourse to it now.

Intercession of C. Octavius.

We have seen that Tiberius Gracchus was by no means sure of the support of his colleagues. Among these was one Caius Octavius, a friend and perhaps a kinsman of Gracchus, who might probably, if left to himself, have hesitated to oppose a bill calculated to be received with unanimous approval by the people; but he gave way to the entreaties of his political friends, and resolved to intercede against the agrarian law.

Eloquent speeches of Tiberius Gracchus.

The voting was as usual preceded by discussions and debates in the open meetings (*contiones*) of the people, in which Gracchus did his best to inflame the multitude and to convince them of the importance, expediency, and justice of his bill. He was a man of refined eloquence, full of warmth and enthusiasm for his cause, and full of indignation at the avarice of the ruling aristocracy. How stirring his words must have been, we can judge from the following sample which Plutarch[1] has preserved for us: 'The wild beasts of Italy,' he said, 'have their caves and lairs, but to the men who fight and bleed for Italy nothing remains except the open air and the light of heaven. Bereft of home and shelter, they wander about with their wives and families. It is mere mockery and delusion in a general to exhort his warriors before a battle by bidding them fight for the graves of their ancestors and for their

[1] Plutarch, *Tib. Gracchus*, 9.

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household altars, for not one of them owns an altar bequeathed him by his father nor the ground where his fathers are laid. They fight and fall that others may enjoy affluence and luxury; they are called lords of the earth, and have not a single clod of earth which is their own.' CHAP. II.

The voting on the law prevented by the intercession of Octavius.

Such speeches were eagerly listened to by the impoverished people, whilst they turned a deaf ear to those who endeavoured to prove from political or economical reasons that the bill of Tiberius must be detrimental to the state. The rural population flowed into the town in vast numbers to exercise their right of suffrage;[1] the excitement increased, and passion began to drown the voice of calm reflection. When the time had arrived for voting on the proposed law, Octavius put in his veto,[2] and could not be prevailed upon to retract it, either by the menacing attitude of the crowd or by the entreaties of Tiberius Gracchus, who implored him as a friend to drop his opposition, and promised full compensation for any pecuniary loss which as an owner of land he would sustain by the law. Octavius remained staunch in the exercise of his constitutional rights. The voting could not be proceeded with, and the attack of Gracchus on the established economical arrangement was beaten off for the present.

Counter-intercession of Tiberius Gracchus.

Tiberius was of course not the man to accept this failure as the final result of his plans. He proceeded likewise to make use of his right of intercession, and, in the manner of the old tribunes which had long fallen into disuse, he lodged his veto against every public act of the magistrates, placed his seal of office on the treasury in the temple of Saturn, and threatened in that way to paralyse the entire administration and jurisdiction of the republic, until his bill should have been put to the vote. Amid the fearful disorder in public business which ensued, it seemed

[1] Diodor. xxxiv. 6: *καὶ συνέρρεον εἰς τὴν Ῥώμην οἱ ὄχλοι ἀπὸ τῆς χώρας ὥσπερεὶ ποταμοί τινες εἰς τὴν πάντα δυναμένην δέχεσθαι θάλατταν.*

[2] Appian, *Bell. Civ.* i. 11, 12. Plutarch, *Tib. Gracch.* 10.

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as though the constitutional struggle would end in open violence. Those who were threatened with loss of their property put on mourning, but at the same time they organized their followers for resistance, so that Tiberius probably had good reason for apprehending danger to his person and for guarding against assassins by carrying a dagger.

His position and policy.

In the days of the old contests between patricians and plebeians, the latter had never succeeded in obtaining their object by sudden rushes. To gain a fresh point was often the work of years. The tribunes of those days were content if they could hope gradually to gain ground, and year after year they repeated their attacks upon the positions which the ruling classes so stubbornly defended; but each year they made some headway, and finally they gained the victory. This was not the style of tactics calculated to suit the impetuous Tiberius Gracchus. Although he had no party to speak of among the influential houses; although he could not hope to act in accordance with the senate, and was obliged, in defiance of the established practice, to appeal straightway to the people; although his measures threatened the material interests of the nobility and could not fail to provoke their most determined resistance, he yet was rash or enthusiastic enough to hope for immediate success. He probably did not believe that the circumstances which for the moment seemed so promising would last. His adversaries had been taken by surprise and were unprepared for resistance; the people were roused and greatly excited in favour of the change; the rural population, which could seldom be induced to take an active part in public affairs, had crowded into the town in large numbers. It was desirable that they should be enabled to exercise their influence in favour of the reform before their ardour cooled down. The populace of the city was not so much to be relied upon, as they had no wish to share in the distribution of land, but were, on the contrary, dependent on the rich families for their daily subsistence.

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Tumult in the comitia.

These considerations probably induced Tiberius to deviate from the usual constitutional practice, and forcibly to insist on an immediate solution of the problem. A second attempt was made to put his bill to the vote in the popular assembly, but again Octavius interrupted the proceedings, and the nobles broke into the assembly with their followers and upset the voting urns, so that a bloody contest seemed at hand. Tiberius was prevailed on by the entreaties of two consulars once more to try the effect of persuasion with Octavius in presence of the senate, which happened to be assembled. When this attempt proved futile, as might have been expected, his resolution was confirmed to have Octavius removed from office by a vote of the people.

Deposition of Octavius by the vote of the tribes.

The republican constitution knew no formal dismissal from office, and could not know it, for it would have been a contradiction to the very principle of republican government.[1] Magistrates had frequently found themselves compelled by public opinion to lay down their offices; but this had always been done in such a manner that it in no way invalidated the principle that magistrates elected by the people for a definite period could not be deposed even by the people themselves from their offices. The resignation had always been, at least in form, a voluntary act of the magistrate, and had never been extorted by means of a popular vote. Notwithstanding this acknowledged principle of the republic, Tiberius ventured to take the revolutionary step of appealing to the people for the deposition of his colleague. He knew without a doubt that he was thereby trespassing beyond the limits of the law. He implored Octavius to resign voluntarily, and offered to submit his own continuance in office to the decision of the people if Octavius would do the same; but Octavius would not abate one iota of his lawful right. Tiberius then had no alternative but to execute his threat, and so he assembled the tribes in order to obtain from them the necessary vote for the deposition of Octavius. It is plain

[1] Above, p. 80.

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that Octavius might have prohibited the voting as before by virtue of his veto; but he abstained from doing so, whether from a reluctance to stand up himself in defence of his authority, or from fears of violence, or because he may have thought that if he interceded against the motion of Gracchus he would *de facto* admit that it was made legally. When seventeen of the thirty-five tribes had voted for the deposition of Octavius, Tiberius once more tried the effect of entreaties, and begged his colleague to retire voluntarily before the eighteenth and decisive vote should be given. He evidently dreaded the illegal step which he was about to take, and by which he was for ever forced to abandon the hope of legal reform and to enter upon a revolution. But Octavius was inexorable, and Tiberius now let matters take their course. The deposition of the tribune was carried, and Octavius, dragged from his place by the attendants of Tiberius, narrowly escaped rough usage at the hands of the excited and infuriated populace. Tiberius had gained the victory; but he had triumphed over the laws and customs of his country, a triumph which soon wrought his own ruin.

Apology of Tiberius Gracchus for the course taken with regard to Octavius.

The adversaries of Tiberius endeavoured, as was natural, to make capital out of the error which he had committed, by representing him to the people as a dangerous revolutionist. They succeeded in their object so far that he found it necessary subsequently to justify his conduct before the people in a long speech, of which Plutarch has preserved some of the chief points. If we were to estimate the political sagacity of Tiberius from this specimen of his oratory, we should not place him very high; for what he says in his defence is a tissue of mere sophistry. The tribunes of the people, he argues, are sacred and inviolable, because they have to advocate the cause of the people. But if they injure the people instead of supporting their cause, then they must forfeit their office and their inviolability; for else they might on the strength of their privileges claim impunity for the most atrocious outrages, such as destroying the capital or setting fire to

the shipbuilding yards. A tribune who betrays the popular cause, he urged, is no longer a tribune of the people. If a tribune had the right of casting even a consul into prison, how could it be disputed that the people had the right of taking away from a tribune the power which he employed against the people? King Tarquin had been dethroned because he acted unjustly; the holy virgins, if they neglected their duty, were buried alive, for through sin they forfeited their sanctity; and the same rule applied to the tribunes. Why then should not a magistrate who had received his office from the majority of the tribes be obliged to resign it when it was the unanimous desire of all the tribes? Nothing could be more holy than that which was consecrated to the gods, and yet nothing prevented the people from devoting it to whatever purpose they chose. Thus the people might look upon the office of a tribune as an offering to the gods, and transfer it from one to another, for it was no uncommon occurrence for magistrates to abdicate.

Irrelevance of the apology.

Not one of these arguments applies to the matter at issue. Offences on the part of Vestal virgins were punished after trial and conviction, just like any other crime, according to established law and not according to the whims of party politicians; the dethroning of the kings was a revolution, and could therefore afford no precedent for constitutional practice. That the decision of a majority might at any time be cancelled by a resolution of a greater majority, was a principle applicable only to the alteration of a law or of a formal statute, but not to the violation of an existing one. No public order or liberty would be possible if a sudden whim could overthrow every legal barrier; there is no sense or object in having laws at all, if they are not to be observed as long as they are formally in force. We need not refute the inference which Gracchus drew from the right of the people to dispose as they thought fit of that which was consecrated to the gods, for this right is not in any way germane to the case in question, neither is an abdication equivalent to a deposition. It certainly

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seems plausible that the people should have a right to dismiss from office a magistrate who does the reverse of that for which he was elected, and especially the tribune who injures the people instead of protecting them. But this theory is so utterly false that it has never been made law in any republic, for the simple reason that with such a law all government by regular magistrates would be impossible. The election of magistrates by popular vote merely signifies that the people admit their inability to conduct the public business themselves. Therefore they transfer their rights for a fixed period to men who enjoy their confidence. During this period the elective rights of the people must be suspended, for else the appointment would no longer be for a fixed period.[1] Such magistrates are not irresponsible; but if open resistance be not provoked by treasonable acts or such as imperil the state, they must retain the authority entrusted to them. All magisterial power would be annihilated, and government by magistrates rendered altogether impossible, if the sovereign people were to depose a magistrate because he followed his own conviction in politics instead of following the prevailing current of public opinion. The very object of investing him with power is this, that he shall use it conscientiously according to his own judgment. Gross breaches of faith, such as firing the capitol, might be looked upon as next to impossible on the part of a man whom the esteem and confidence of his fellow-citizens had called to the head of the administration. It is not deemed necessary in any institution to provide against the possible crimes of a madman; should they nevertheless be attempted, then violence must be repelled by violence. As to private offences they come under the ordinary criminal law, and are punished in accordance with a fixed legal code. To regard and treat a magistrate as a

[1] With the same arguments as those employed by Tiberius Gracchus, any constituency of a member of Parliament might at any time recall their representative. It would under such a practice be useless to fix any time for the duration of a mandate.

criminal for a political act which is formally justifiable should surely not be in the power of an adverse party, even if it happened to be a majority. Else an end would be put to all free political life, which consists in the harmonious working of opposed forces, and in its place the worst form of despotism would be introduced, despotism in the form of a democracy.

Dangerous position of Tiberius.

Tiberius was undoubtedly aware of the critical position which he had assumed by driving his colleague from office. One Titus Annius, a clever disputant, accused him publicly of having violated the sacred rights of the tribunes,[1] whereupon Tiberius became exceedingly wroth, and threatened to impeach Annius before the people. But Annius in reply simply asked him what he would do if one of his colleagues were appealed to and granted intercession against this impeachment; would he have this colleague also turned out of office? This simple question, says Plutarch, so abashed the eloquent Tiberius that he had not a word to say in reply.

The law of Gracchus carried.

However, when Octavius had been turned out of office, and the vacancy thus created in the full number of tribunes had been filled by the election of Caius Mummius,[2] the land bill was passed, and the clause omitted which provided that the present holders of state land should be indemnified for investments made on lands to be surrendered.[3] Tiberius is said to have dropped this clause in order to punish the aristocrats for their opposition; but more likely he resolved to drop it on account of the difficulty

[1] The writers who speak of the deposition of Octavius, and discuss the legal question on which it turned, confine their remarks to the office of a tribune, instead of speaking generally of the deposition of republican magistrates. They were more struck with the violence done to the sacred office of the tribune than by the illegality of the act as it affected all republican offices. It does not follow from this one-sided representation that the old annalists were unaware of the general principle which was involved in the case of Octavius.

[2] Appian, *Bell. Civ.* i. 13. According to Plutarch, *Tib. Gracch.* 13, the name of the new tribune was Mucius.

[3] Plutarch, *Tib. Gracch.* 10: *πρὸς τοῦτο παροξυνθεὶς ὁ Τιβέριος τὸν μὲν φιλάνθρωπον ἐπανείλετο νόμον.*

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of raising the necessary funds for the indemnities in question. A committee of three men was appointed to carry the law into execution, consisting of Tiberius himself, his brother Caius, and his father-in-law Appius Claudius Pulcher. Thus was attained the object at which the bold innovator had aimed. Notwithstanding the opposition of the almost unanimous senate and of a portion of his colleagues, by a single vote of the sovereign people, or at least of that portion which had assembled at Rome for the purpose, a law had been passed which deeply affected the interests of all classes, and was intended to lay a fresh foundation for the material welfare of the Italian peasantry.

Passive resistance of the senate.

When Tiberius and his two colleagues applied in the senate for means to defray their official expenses, the defeated aristocrats betrayed their vexation by granting, as in mockery, on the motion of P. Cornelius Scipio Nasica, a daily allowance of twenty-four asses (one shilling), whilst they refused to grant tents and other necessary articles on the plea that a tribune, not being permitted to quit the town, would have no use for them. By such paltry devices they could not, of course, hope to gain anything; but they showed by what spirit the highest authority in the state was animated, and how little cause Tiberius had to hope that his law would be conscientiously carried out after he should have retired from office.

Will and bequest of Attalus, King of Pergamum.

The consequence was that he endeavoured to secure the permanent good will of the people, and to counteract the intrigues of the optimates, who by means of their wealth could easily supplant him in the favour of the venal populace. It so happened that ample means for this purpose were at this very time supplied; for Attalus III., King of Pergamum, the last of his line, had just died, and had bequeathed his empire and treasures to the Roman people. An envoy from Pergamum appeared in Rome with the king's will to lay the magnificent inheritance before the senate. Tiberius Gracchus, who was justly apprehensive that the great influence of

the optimates would be increased by their having the right to dispose of such a treasure, proposed[1] to apply the money for providing the new settlers on the allotted land with working capital. A second proposal, equally hostile to the nobility, was that the organization of the newly acquired province of Asia should be taken from the cognisance of the senate, to which it properly belonged, and be given to the people.[2] It was evident that not the people but the popular leader thus obtained an immense increase of power and influence. The hatred of the nobility knew no bounds. They had a fair pretext for accusing Tiberius of the attempt to make himself master of Rome by squandering away the public wealth in bribes for the populace. Rumours were spread about that he meant to make himself king, that he had entered into a conspiracy, and had actually been presented by Eudemus, the agent of the deceased king of Pergamum, with a royal diadem and a purple mantle.

Further measures of Gracchus.

That the latter reproach was not only unfounded but absolutely absurd needs no proof. Possibly it may have originated at a later period, when in the course of the civil disturbances it occurred to the annalists that an adventurer might possibly assume the title and power of a king. But though Tiberius never dreamt of establishing a throne for himself, he certainly intended to break the power of the nobility. To that end it was necessary to enlarge the prerogative of the people by placing in their hands the control of the finances and the management of the provinces. Another reform which Tiberius had in view, and which was carried by his brother Caius, consisted in curtailing the judicial powers of the senators and in conferring these powers on the order of knights. The evidence we possess on this matter is very defective. It is not clear whether Tiberius intended to elect judges from the equestrian order in addition to the senatorial

[1] It seems that this proposal was not formally accepted and passed into a law. Comp. Mommsen, *Röm. Gesch.* ii. 113.

[2] Plutarch, *Tib. Gracch.* 14. Aurel. Vict. 64.

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judges, or whether he intended to transfer the office of judge exclusively to the knights. Either regulation would have raised up in the equestrian order a check on the ruling nobility. The proposal however was not proceeded with, perhaps not even fully matured in theory. Perhaps Tiberius merely indicated what he intended to do, if he should continue in office as tribune for the following year.

Necessity of dealing with the question of the Italian allies.

Another proposed reform of Tiberius related to an extension of the right of appeal, and he is also said to have held out hopes of an abridgment of the period of military service. But it is doubtful whether he brought forward in a mature and precise form a plan for conferring upon the Latin and other Italian allies the rights of Roman citizens. We may safely assume that he kept this measure in view as the final aim of his endeavours, for his agrarian law could answer no purpose if it did not in the end place both classes of Romans on the same level. But he was perfectly aware that this scheme brought him on very dangerous ground. Not until he should have firmly secured the votes of the Roman citizens, and by other laws thoroughly won their favour and their gratitude, could he venture to demand that they should give up an invidious and unjust privilege, and share with the long-oppressed Italians the advantages which they had so jealously guarded for themselves. He could not fail to know that his aristocratic adversaries would lose no opportunity of representing him as an enemy of the genuine citizens, and that they would have no difficulty in doing so, if he encroached too far on their exclusive privileges. Thus the position of the tribune was really very difficult. His opponents organized themselves, and to oppose their armed bands Tiberius found it advisable to collect his adherents for the protection of his person, and to appear in the market-place with a kind of body-guard. The constitutional agitation was more and more shifted from the legitimate contest of words and arguments, and was approaching a decision by brute

force. It was plain that the first occasion would be seized for open war.

Resolution of Gracchus to present himself again as a candidate for the tribuneship.

The optimates expected that Tiberius would retire from the tribunate at the end of his year of office. In that case he would be again a private citizen, and as such liable to a legal prosecution which his enemies made no secret of intending to institute against him.[1] If such a prosecution should terminate unfavourably for him, his whole reform would be imperilled, for it could then easily be cancelled as having been passed by illegal means and against the intercession of a tribune. Tiberius saw but one way of meeting the threatening storm, and this was to procure his re-election as tribune for the following year instead of retiring into private life. In former times it had been no uncommon occurrence for tribunes to be re-elected for several years in succession. But since then laws had been passed by which the old freedom of election had been restricted. By the law of 342 B.C. the consulship could no longer be held a second time till after the lapse of ten years.[2] The tribuneship was laid under a similar restriction, either by a special law or by a constitutional custom which amounted to a law. The re-election of a tribune for a second year of office was certainly considered illegal.[3] When therefore Tiberius resolved again to become a candidate for that office, he afforded his adver-

[1] Appian, *Bell. Civ.* i. 13.

[2] Ne quis eundem magistratum intra decem annos caperet.

[3] According to Appian, *Bell. Civ.* i. 14, the nobles maintained that it was not lawful for a tribune to be elected in two successive years (*οὐκ ἔννομον εἶναι δὶς ἐφεξῆς τὸν αὐτὸν ἄρχειν*). See Mommsen, *Staatsrecht*, i. p. 427. Tiberius perhaps argued that the re-election of a tribune could not be illegal, because it was impossible for a law to tie down the action of the sovereign people. His argument (p. 396) that the people must be at liberty, in spite of any constitutional obstacle, to deprive a magistrate of his office, would apply with even greater force to the re-election of a man they approved of, the more so as the law of 342 B.C. had often been set aside in times of necessity, as, for instance, in the course of the Hannibalic war. But it had in such cases been customary first to suspend the law of 342 B.C. by a plebiscitum, before an election took place in defiance of its limitations. If the same had been done now, Tiberius would have acted correctly. But he seems to have considered a previous repeal or suspension of the law unnecessary, because in his opinion the people could do no wrong.

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saries the desired opportunity of catching him in an illegal act, and of appearing against him as the defenders of the constitution.

Fears of Tiberius Gracchus.

The election of tribunes took place in the summer, when most of the peasantry were engaged in the harvest and thus unable to attend public meetings in the city. The elections, which rarely caused any excitement, were generally decided by those members of the tribes who lived in Rome, that is by the city populace, which was by this time to a great extent dependent on the optimates, whilst only the rural population formed a decided opposition to the great landholders and resolutely supported Tiberius and his reforms. Tiberius was therefore by no means sure of success, and even feared that the optimates would oppose his re-election by main force. He called upon his friends to protect his family and himself from violence, for he had a presentiment of his approaching end. He knew the fierce determination of the men who now boasted of defending the old laws of the republic against criminal innovation, nor could he fail to see that, having himself deviated from the legal course, he had hardly the right to look to the law for protection.

Postponement of the election.

The day of the election arrived. Two tribes had already given their votes in favour of Tiberius, when the party of the nobility interrupted the proceedings by interposing that the election was illegal and should not be completed. Rubrius, the presiding tribune, doubted whether he was justified in proceeding with the election notwithstanding the objection raised against it. Mummius, who had been elected in the place of Octavius, offered to conduct the election in his place, but the rest of the tribunes decided that as Rubrius had been appointed by lot to preside, the lot must be cast again to decide who should take his place. The majority of the tribunes were evidently unfavourable to Tiberius, who found himself obliged to give way and to put off the election till the following day.

Thus the struggle between the two parties had culmi-

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nated in the question whether the re-election of a tribune should be permitted or not. Both parties armed themselves for the contest. Tiberius put on mourning and commended his son to the care of the people, as if he foresaw that his life would be sacrificed. The impression which he made on the people and the sympathy and enthusiasm of his followers again gave him courage. The people followed him to his home in crowds that night, and promised him their support for the morrow. In the night Tiberius gave instructions to his adherents,[1] and decided on the signal to be given if he thought it necessary to use force. Before daybreak he occupied the open space before the temple of Jupiter on the Capitol, where the election was to take place. The voting was about to commence, but the proceedings were impeded, chiefly by the colleagues of Gracchus, who objected to votes being given in his favour. Then Tiberius gave the pre-arranged signal, and the riot began; his adversaries were driven from the place with sticks and cudgels, and the hostile tribunes[2] fled for their lives. The priests hastily closed the temple, and the proceedings of a regular election were interrupted by the wild turbulence of an excited mob. A rumour was spread that Tiberius was deposing the other tribunes, or that he wished to make himself tribune without any popular vote.

Tumult on the renewal of the election.

During this disturbance the senate had assembled not far off in the temple of Fides, and received from time to time flurried and exaggerated accounts of what was going on in the assembly of the people. The wise consul Mucius Scævola, the great lawyer who is said to have regarded with favour the political schemes of Tiberius, refused to give way to the impetuousness of the fanatical aristocrats and to resort to main force. He would not, he said, kill a single citizen without a trial; but if the people, persuaded or compelled by Tiberius, should pass

Murder of Tiberius Gracchus.

[1] Appian, *Bell. Civ.* i. 16, calls them στασιῶται.

[2] We must suppose from the whole narrative that all the other tribunes with the exception of Mummius, belonged to the party opposed to Gracchus.

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any illegal resolution, he would treat it as null and void. The correct and firm bearing of the consul did not satisfy the excited optimates. They believed, or pretended to believe, that Tiberius was aiming at the total subversion of the republican constitution in order to obtain autocratic power for himself. It was said that he had pointed to his own head in order to indicate that he desired a royal crown. 'Since the consul betrays the republic,' called out P. Scipio Nasica, 'I call upon those men to follow me who desire to preserve the laws of our country.' He then drew his toga over his head, and marched into the midst of the boisterous populace at the head of a great number of senators, knights, armed clients, and slaves.[1] The people, seeing the first and foremost men of the city approach in closed ranks, were struck with awe and gave way. The cowards saw that violence was being resorted to, and that the life of their leader, whom they had so long clamorously applauded and whom they had but the day before promised to defend, was in imminent danger; yet not a single hand seems to have been raised in his defence. The assailants plied their cudgels amongst the populace, which turned and ran in all directions like a flock of sheep. Tiberius himself stumbled at the gate of the Capitoline temple, by the statues of the kings, and as he raised himself up again, one of his colleagues, P. Satureius, struck him on the head with a stick. A second blow from L. Rufus laid him lifeless on the ground. With him were slain three hundred of his adherents. The bodies were thrown into the Tiber at night; that of Tiberius by the curule ædile Lucretius himself,[2] after the privilege of burying him had been refused to his brother Caius. So

[1] According to Velleius, ii. 2, the following of Nasica consisted of 'optimates, senatus atque equestris ordinis pars melior et maior et intacta perniciosis consiliis plebs.' In addition to these Plutarch (*Tib. Gracch.* 18) mentions armed slaves, who were no doubt for the most part gladiators, as implied by what Velleius says (ii. 3): hoc initium in urbe Roma civilis sanguinis gladiorumque impunitatis fuit. It is evident that all classes, from the highest to the lowest, were divided between the two factions.

[2] Aurel. Vict. 64, 8.

ended the first great sanguinary struggle which had grown out of political strife in Rome.[1] When the Capitol was cleared of blood and corpses, the victors deluded themselves with the hope that they had shut the gates of civil discord for ever. They never dreamed that what they had seen was but the faint prelude of that terrible drama in which their children and grandchildren were destined to be the actors and the sufferers.

Action of the senate after the death of Gracchus.

The optimates, having violently crushed the democratic party, profited by the dejection of their adversaries in order to legalise their own proceedings. An extraordinary tribunal was instituted for the purpose of calling all those to account who were said to have been guilty with Tiberius of an attempt to overthrow the existing constitution. Amongst the judges was seen, beside P. Scipio Nasica, the leader of the victorious party, C. Lælius, who in former years had himself thought of bringing in a bill relative to the state lands similar to that of Tiberius.[2] Hence it appears that even men of moderate views, and favourably disposed to the popular cause, condemned the action of Gracchus. Such a one was the consul Mucius Scævola, who had refused officially to act against the rioters, but subsequently approved the conduct of Nasica. Even Tiberius's brother-in-law, P. Scipio, who was still before Numantia, is said, on hearing of the bloody catastrophe, to have expressed his approval in the words of Homer: 'So may all perish who shall do like things.'

Scanty following of Gracchus.

We do not hear of any prominent men having been condemned. Party hatred was satisfied with a few victims, men of lower rank, amongst whom were Diophanes and Blossius, the Greek teachers and friends of the slain Tiberius. It is quite plain that as yet there existed in Rome no influential democratic party, and that only a few men of the prominent families inclined to favour the views

[1] This is perhaps not literally correct. At least we hear of several political murders, such as that of Spurius Mælius and of Genucius. But of wholesale slaughters we know nothing in all the course of the ancient struggles between patricians and plebeians.

[2] Above, p. 375.

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of the Gracchi. Others whose voice carried weight were either of a disposition positively hostile to that movement, or else their approval was but lukewarm. Without vigorous support from the more liberal-minded of the aristocracy it was not possible that a party formed by a single man out of the mass of the proletarians should exhibit strength enough for a contest with the old nobility. It could not fail to collapse as soon as the leader had perished, and all reforms effected by it could not but be equally short-lived unless they were such as must of necessity have grown out of the existing order of things.

The commissioners for the Sempronian law.

The optimates might undoubtedly, after the death of Tiberius, have formally abolished the agrarian law, for they could justly have asserted that it had been accepted by the tribes against the intercession of a tribune, and that it was therefore vitiated and could not be binding. But they preferred ostensibly to let it stand, convinced as they were that they would find no difficulty in frustrating its object if their interests should be endangered. Hence they permitted another triumvir to be elected to the board for the distribution of land in the place of Tiberius, even though this man was another member of the Gracchan connexion, P. Licinius Crassus, the father-in-law of Caius Gracchus.[1] The triumvirs entered on their

[1] Mommsen, *Röm. Gesch.* ii. p. 100, thinks that the labours of this commission must have been productive of great results; for the increase of Roman citizens between the years 131 B.C. and 125 B.C., according to the recorded numbers of the census lists, amounted to no less than 76,000. Mommsen accounts for this increase by the supposition that the Gracchan triumvirs for land assignments divided that number of allotments, and created thereby so many new peasant proprietors. There is an obvious fallacy in this argument, for how could the assignment of allotments to poor citizens increase the number of citizens? There is nothing to justify the assumption that non-citizens were to share in the benefit of the land law, and that by receiving allotments they were to be advanced to the rank of citizens. If the statements respecting the census of 131 B.C. and 125 B.C. are to be trusted, the great increase in the number of citizens must be explained in another way. It is possible, as Lange conjectures (*Röm. Alterth.* iii. 27), that after the revolt of Fregellæ, 125 B.C., a portion of the allies were admitted to the Roman franchise by several plebiscites. We know nothing of such plebiscites; but it is not unlikely that the Roman senate in 125 B.C. acted on the principle of making timely concessions to a portion of the rebels, and thus preventing unanimous

duties under the most unfavourable circumstances. Their first task was to decide what was public and what was private property; for they could not proceed to a distribution of land until the facts on which it was to be based had been ascertained.[1] They were endowed with full judicial powers to decide in all disputed cases what was private and what public property. Tiberius had brought in a bill giving them this authority, and they appear to have availed themselves of it where it was necessary; but we may entertain serious doubts whether they or their immediate successors ever got beyond this first stage of their labours, and whether they really accomplished the task of setting up any considerable number of independent freeholders.

action among them. This is what was done in 90 B.C. during the great Social war. By such an admission of allies, the increase of citizens between 121 and 125 might possibly be explained.

[1] Some of the boundary stones set up by the commission have actually been preserved. See *Corpus Inscript. Latin.* i. notes 252–255, 583, 1504.

CHAPTER III.

SCIPIO ÆMILIANUS.

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Moderation of the nobles after the tumult.

THE ten years which elapsed from the death of Tiberius Gracchus to the tribunate of his brother Caius were years of a political reaction unavoidable after the failure of a great scheme of reform. The ruling aristocracy was more exasperated than shaken. Of the hopes which the great mass of the Roman people had entertained of better times not one was fulfilled. The Italians were still outside the pale of Roman citizenship, and their claims to admission seemed as far from realisation as ever. Yet the victorious aristocracy did not act without some degree of moderation and political prudence. As has been said already, the prosecutions and punishments of the democratic party were not extended to the more prominent adherents of the murdered tribune. Neither Appius Claudius Pulcher, his father-in-law, nor his brother Caius, who were his colleagues in the triumvirate for assignments of land, nor Fulvius Flaccus, was in any way molested. The validity of the agrarian law passed by Tiberius Gracchus was not called in question; on the contrary the government seemed to be willing honestly to carry out its provisions.

Influence of Publius Scipio Æmilianus.

To allay the general excitement, an appeal was made to the religious feelings of the people. The Sibylline books were consulted, and on their suggestion an embassy was sent to Sicily to pacify the goddess Demeter of Enna. It really seemed that there was a general wish to act in the spirit of reconciliation, and it is not improbable that much of this tendency was due to the influence of Publius Scipio Æmilianus, the conqueror of Carthage and Numantia, a man who had always endeavoured to hold an

independent course equally removed from the extreme views and passions of either party. By birth and family connexion he belonged to the highest nobility, yet he was not in principle opposed to the development of the constitution in a liberal spirit. He had given the whole weight of his influence in favour of the ballot law of Lucius Cassius of 137 B.C., and had thereby incurred the antipathy of the uncompromising members of the nobility. But he had not approved the illegal proceedings of his brother-in-law Tiberius, and on his return from Numantia he openly espoused the cause of those who defended the existing constitution against further innovations. Nor could he act otherwise, unless like Caius Gracchus he took up strictly the position of a reformer. From this position he was far removed, and he was therefore compelled to range himself on the side of those who opposed the final tendencies of the democratic movement.[1]

Position and prospects of the democratic party.

It seemed that this movement was now doomed to utter failure. The party which supported it was weak, not so much in numbers as in leaders. Caius Gracchus, too young to think of carrying on the work which his brother had begun, kept himself in the background, and collected experience for his political career by going through the regular course of a military and official training. The consular Appius Claudius Pulcher, the father-in-law of Tiberius Gracchus, though one of the triumvirs for the assignment of public lands, took no active part,

[1] The dissensions in the senate of which Cicero speaks (*De Republ.* i. 19, 31), were in all appearance not very serious, and not caused by a fundamental difference of opinion. Appius Claudius and Licinius Crassus certainly were hostile to Scipio and his friends only from motives of personal ambition. Metellus differed only on mere matters of opinion, and this difference in no way interfered with mutual esteem. Comp. Cicero, *Læl.* 21, 77, *De Offic.* i. 25, 87: sine acerbitate dissensio. Vellei. Paterc. i. 11: acres innocentesque pro re publica cum inimicis contentiones. The same may be said of Publius Mucius. Of the personal rivalries of these men, which no doubt were numerous, we know very little; but what we know suffices to explain their relation to each other. It is an unfailing proof of the secure dominion of a party, when quarrels break out among the individual members from paltry personal differences. In a common danger they generally sink all these differences, and heartily join in the common defence.

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being prevented perhaps by ill-health; and he died soon after. Publius Licinius Crassus, who had been elected as a member of the triumvirate in place of Tiberius, obtained the consulship for the year 131 B.C. This might have enabled him to push on vigorously the execution of the agrarian law; but being a most ambitious man and bent on accumulating wealth, he longed for the command in Asia against Aristonicus, the natural son of the late king Attalus of Pergamum, who disputed the pretended testament of his father, and aspired to the throne himself. Although Crassus was Pontifex Maximus, and as such legally prevented from leaving Italy to take a foreign command, he was nevertheless designated to prosecute the war in Asia. We shall see in another chapter, that in this war he not only failed in obtaining an easy victory and the coveted booty, but met with an ignominious defeat and an inglorious death. Mucius Scævola, who is reported to have approved the agrarian law of Gracchus from the lawyer's point of view, showed not the slightest inclination as consul in 133 B.C. to stand up for the defence of the reformer when he was murdered by his assailants, and after the catastrophe he formally joined the party of the victors. Of other men, who, like Metellus Macedonicus, have been named among the leaders of the popular party, it is not known that they in any way took a prominent part in the struggle.

Policy of Caius Papirius Carbo and Marcus Fulvius Flaccus.

Only two stand out as exceptions. These were Caius Papirius Carbo and Marcus Fulvius Flaccus. The latter of these threatened in 132 B.C. to accuse Nasica, the murderer of Gracchus, and thereby induced the senate to save their champion by sending him away from Rome on a diplomatic mission to Asia. Carbo, who was bold enough publicly to lament the death of Tiberius Gracchus,[1] was elected tribune of the people for the year 131 B.C., and

[1] Cicero, *de Orat.* ii. 40, 170. This is, by the way, a proof of what has been said above (p. 410), that the victorious party showed great forbearance to their defeated enemies. The same inference may be made from the bold attitude assumed by Flaccus in his attack upon Nasica.

in this office succeeded in carrying the popular measure of applying the ballot, which had already been introduced in elections of magistrates and judicial assemblies of the people, to the ratification of laws by the popular vote. Perhaps this innovation was considered by the nobility to be of no great moment after Publius Scipio had approved it in the case of the Cassian law; and moreover it may have been discovered that secret voting did not to any considerable extent weaken the influence of the nobility or affect the decision of the people. But when Carbo came forward with a second proposal, and endeavoured to remove the legal obstacle to the re-election of tribunes which had proved so fatal to Tiberius Gracchus, he met with the most determined opposition not only on the part of the uncompromising chiefs of the aristocracy, but also on the part of its more moderate supporters. Scipio Æmilianus used all his influence to defeat this measure, and, in a speech which he delivered on this occasion, declared before the assembled people that in his opinion Tiberius Gracchus, if he was aiming at illegal power, had been justly put to death. As the people murmured and interrupted him, the haughty Scipio commanded them to be silent with these memorable words: 'Let no man speak to whom Italy is but a stepmother,' and when the uproar increased at this insolent taunt, he added: 'Do you think I fear the men whom I brought here in chains, now that they are set free?' The people were cowed by this haughty spirit, and Carbo's proposed law was rejected.[1]

New commission for carrying out the Sempronian law.

Nevertheless Carbo had infused new life into the popular party, and we perceive a renewed agitation in their ranks. For the year 129 B.C. Carbo was elected with Caius Gracchus and Marcus Fulvius Flaccus triumvir for the assignment of land in pursuance of the Sempronian law. These three men, it appears, now seriously endeavoured to carry out the provisions of the agrarian law. They thus provoked a more determined resistance on the

[1] Livius, 59. Valer. Max. vi. 2, 3.

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part of the nobility. According to the law, the triumvirs were entrusted with judicial authority to decide all questions of disputed possession, and to fix the boundaries of those lands which were to be resumed by the state for assignment to new settlers.[1] These questions must have been most intricate, as accurate and trustworthy records and title-deeds were not in existence. In most cases the decisions of the triumvirs must have been to some extent arbitrary, and they must have cut short the arguments of the interested parties on grounds of what they considered the public interest. As long as men of the popular party, personal friends and adherents of Tiberius Gracchus, had these final decisions in their hands, there was some prospect that the spirit of the agrarian law would be carried out. But now the nobility made a stand. The triumvirs were deprived of their right of deciding all disputed questions of ownership and occupation, and this right was transferred to the consuls. Here again Scipio Æmilianus led the opposition against the democratic party, and it was no doubt his great influence which determined the decision of the people.[2]

Indirect suspension of the law.

By this decision the agrarian law was made almost a dead letter. The nobility had the consular elections in their hands, and it was not likely that consuls elected by their influence would be anxious to injure the possessors of public lands by deciding disputed questions in a way injurious to their interests. Nay, it was very doubtful whether they would busy themselves with any such litigation at all. They could allege that they were too much occupied with other affairs, as they actually did after the passing of the law. The consul Sempronius Tuditanus, to whom nominally the judicial office was entrusted, left

[1] The provision of the agrarian law of Gracchus is shortly defined by Livius, 58: promulgavit (Tib. Gracchus) et aliam legem agrariam. . . . . ut iidem triumviri iudicarent. qua publicus ager, qua privatus esset.

[2] The repeal of the important paragraph in the Sempronian law must have been effected by a plebiscitum; for a senatus consultum could not alter an existing law.

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Rome and Italy, and made an expedition against the Iapydes in Istria, leaving the triumvirs without a ground on which they could operate.

Opposition of the Latin and Italian allies.

At the same time a second difficulty presented itself. The agrarian law of Tiberius Gracchus applied to all the public land of Italy, including not only that portion which was occupied by Roman citizens, but also the lands in the occupation of Latins and other allies. It is likely that the triumvirs had begun their operations with the land situated within the thirty-five Roman tribes. The possessors, disturbed or alarmed by these operations, were therefore Roman citizens exclusively. The intended new settlement was so far an internal question for the body of the citizens. But it could not remain so. When the triumvirs began to survey the public land occupied by Latins, as a preliminary step to its confiscation and assignment, the owners of land throughout Italy caught the alarm, and made an effort to stay the execution of the law. The Latins took their stand on compacts made between them and the republic, by which the public land had been solemnly granted to them for their use. They argued therefore, with all appearance of justice on their side, that the Romans had no claim to these lands, and could not resume them. Such arguments as these were naturally acceptable to all the opponents of the Sempronian law in Rome, and the Italians accordingly found their cause taken up by the nobility, especially by Publius Scipio Æmilianus. Rome was again violently agitated. In the various Italian communities the same classes and interests were opposed to each other as in Rome.[1] Whilst the possessors complained of confiscation, and protested against the law as unjust, the Italian peasants saw in it a deliverance from dependence and poverty, just as the poor Romans situated like themselves had done. The city

[1] Appian, *Bell. Civ.* i. 10: τοιαῦθ' ἑκατέρων (*i.e.* the occupiers of public lands and the poor) ὀδυρομένων τε καὶ ἀλλήλοις ἐπικαλούντων πλῆθος ἄλλο ὅσον ἐν τοῖς ἀποίκοις πόλεσιν ἢ ταῖς ἰσοπολίτισιν ἢ ἄλλως ἐκοινώνει τῆσδε τῆς γῆς, δεδιότες ὁμοίως ἐπῆεσαν καὶ ἐς ἑκατέρους αὐτῶν διεμερίζοντο, κ.τ.λ.

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of Rome was thronged by crowds of Italians, who, divided against each other, strove to obtain a hearing from the leading men, and to get their alleged rights or claims allowed. The task of Scipio was not easy. To gratify the wishes of both parties was impossible. Being called upon to declare his views, he pronounced in favour of the occupiers of public lands, and offered to defend the rights which had been secured to them by solemn treaties. With this declaration Scipio had finally abandoned his conciliatory policy, and had joined the ranks of those who were the uncompromising opponents of the whole Sempronian reform.

Death of Publius Scipio Æmilianus.

In the midst of this great commotion, when the fate of thousands seemed to depend on the decision taken by the foremost man in Rome, this man was suddenly removed by a mysterious death. After a meeting of the senate in which he had spoken with great applause, Scipio had gone to his house accompanied by a great number of senators and a crowd of the common people. In the evening of the day he had retired into his closet to prepare a speech for the following day. In the morning he was found dead in his bed. In times of excitement people are inclined to look for the explanation of unexpected and startling events not to natural causes which would easily occur to unprejudiced observers, but to such causes as are suggested by a heated imagination, though they have neither probability nor evidence to support them. The death of great men, it is supposed, must be extraordinary, and the vulgar revel in stories of secret conspiracy and murder. It is not, therefore, surprising that the sudden death of Scipio, in the midst of a great political crisis, should have given rise to suspicions of murder. Though there was no particle of evidence against anybody, though there was not even any proof that he had died a violent death, the most reckless charges were brought, and are still maintained, against several persons, among whom were not only personal enemies, but his own mother. The very multiplicity of these charges shows that they are

nothing but wild conjectures. After a minute and careful examination of the circumstances, there appears to be no reason to doubt that Scipio's death was natural. This seems to be satisfactorily established, if there were no other evidence, by that of C. Lælius, who was for many years Scipio's intimate friend and adherent. Lælius composed a memoir of his friend, which Q. Fabius Maximus, the brother of the deceased,[1] made use of in the speech he delivered at the funeral. In this speech the death is ascribed to sickness,[2] a fact which we can believe the more easily, as, according to Plutarch,[3] he was by nature of a weak constitution. The sudden death was therefore easily accounted for, and the majority of people were satisfied that there had been no foul play.[4] The funeral was in one sense private,[5] for it was not at the public charge, but it was celebrated with the pomp becoming the birth and greatness of the deceased, and it was not interrupted by any popular demonstrations, such as would undoubtedly have taken place if Scipio had been murdered. It is probable that nobody as yet had any suspicions, even if it should be true, as was afterwards reported, that the body was discoloured in several places; for what could such a fact prove or suggest beyond the natural effect of a mortal disease?[6] Scipio was followed to the grave by the

[1] They were both sons of Æmilius Paullus, and adopted respectively into the families of the Cornelii Scipiones and the Fabii Maximi.

[2] Schol. Bob. Cicero, *Mil.* 7, 2: Super Africani laudibus extat oratio C. Lælii Sapientis, qua usus videtur Q. Fabius Maximus in laudatione mortui Scipionis, in cuius extrema parte hæc verba sunt. Quapropter neque tanta diis immortalibus gratia haberi potest, quanta habenda est, quod is cum illo animo atque ingenio in hac civitate potissimum natus est, neque ita moleste atque ægre ferri, quam ferundum est, cum eo morbo obiit et in eodem tempore periit, quum et vobis et omnibus, qui hanc rem publicam salvam volunt, maximo viro opus est.

[3] Plutarch, Rom. 27: οἱ μὲν αὐτομάτως ὄντα φύσει νοσώδη καμεῖν λέγουσι.

[4] Velleius Pat. ii. 4: seu fatalem, ut plures, seu conflatam insidiis, ut aliqui prodidere memoriæ, mortem obiit.

[5] According to Appian, *Bell. Civ.* i. 20, it was no δημοσία ταφή.

[6] Plutarch, *Rom.* 27: καίτοι Σκηπίων ἔκειτο νεκρὸς ἐμφανὴς ἰδεῖν πᾶσι. This account seems intended to contradict another statement, viz., that secrecy was practised at the funeral, and that the body was carried to the place of burial, 'obvoluto capite,' Velleius Pat. ii. 4.

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general esteem not only of his friends, but even of his political opponents,[1] for all were equally convinced that he was no ordinary party leader, nor was actuated by selfish motives. He was respected as a man of independent judgment and sincere patriotism; nor could it be forgotten that he was the conqueror of Carthage and Numantia, and that Rome had lost in him one of her greatest and noblest citizens.

Continued agitation on the subject of the agrarian law.

The opposition of the Latin landowners to the execution of the agrarian law seems to have been so far successful, that no further attempts were made to apply it to the public lands occupied by them, and that the commission of triumvirs appointed for the redistribution of land was prevented from further action. But the agrarian question was by no means solved or set aside; and the leaders of the democratic party were driven to find a solution in another direction.

Unjust treatment of the allies.

The idea of abolishing the legal distinction between Roman citizens and their Latin or other Italian allies had, as we have seen, more than once occurred to some of the most enlightened statesmen.[2] But the pride and selfishness of the privileged class had always opposed such an act of justice with vehemence and indignation. Neither the sufferings and the danger of the Hannibalian war, when a part of the most faithful Latin colonies wavered in their allegiance, and some of the Italian allies actually revolted, nor the feeling of gratitude for the unswerving fidelity of the others, could shake the obstinacy or move the generosity of the senate or the people. It was considered to be almost an act of treason for any statesman even to moot the question whether the allies, or any portion of them, should be admitted within the pale of citizens. Meanwhile the advantages which the full citizenship conferred grew in importance from year to year. A share in the government of the republic became more

[1] Dio. C. fr. 84: *οὐκοῦν οὐδὲ τῶν ἀντιστασιαστῶν τις αὐτῷ θανόντι ἐφήσθη, ἀλλὰ καὶ ἐκεῖνοι καίπερ βαρύτατον αὐτόν σφισι νομίζοντες εἶναι, ἐπόθησαν.*

[2] Spurius Carvilius in the course of the second war with Carthage.

valuable in proportion as its rule was spreading over more and richer provinces. The disabilities to which the allies had to submit became more galling, and were felt to be more unjust, when the Roman citizens formed no longer a great majority, and bore no longer the chief weight of the public burdens. No man of foresight and judgment could doubt that sooner or later the artificial distinction made by law among the two classes of full and partial citizens must be swept away. Statesmen like the Gracchi and their friends, who had at heart not only the greatness of the republic but the happiness of the people, could not rest satisfied with schemes for the amelioration of the political and social condition of the Roman artisans and peasants alone. They felt that their work would only be half done, unless they extended the benefits of the reforms to the great mass of the Italian population. Thus their agitation touched the far more comprehensive question of the political status of the allies, a question which involved another more important still, whether the republican constitution itself could be maintained or was doomed to give way to a monarchy.

Question of the extension of the Roman franchise to the Italians.

The equalisation of the political rights of the whole free population of Italy would, it was easy to see, remove one of the obstacles to the execution of the agrarian law. The landowners among the Latins, if they were made Roman citizens, could no longer object to be treated like the rest; all the reserved rights which they possessed as Latins would naturally lapse if they exchanged their inferior political status for all the privileges of Romans. If thereby they sacrificed certain pecuniary advantages, they on the other hand rose to a level with the Roman aristocracy, and had a chance of sharing the honours and emoluments which the public service offered. The poorer Latins at the same time would share the benefits of the Sempronian laws with respect to assignments of land, the invidious and unjust distinction between two classes of the community being removed, and one law being made common to all. It appears that the excitement among

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the Italians was great when these questions were mooted and a prospect was thus opened for them of acquiring the long-coveted rights. Rome was filled with crowds of people, who, though they were not as yet by law Roman citizens and had no votes to give, exercised nevertheless a certain influence, and helped to form public opinion, which in the end determined the votes in the comitia. The government became uneasy. The tribune, M. Junius Pennus, of 126 B.C., an adherent of the nobility, carried a motion, in spite of the opposition of C. Gracchus, for the expulsion of non-citizens from Rome.[1] It was an indication that a proposal for the admission of the Italians to the Roman franchise would be met by the combined opposition of the nobility and the people of Rome.

Consulship of Fulvius Flaccus.

Soon after the passing of the rogation of Junius Pennus, C. Gracchus, who had begun his public career as quæstor, was sent to Sardinia with the consul L. Aurelius Orestes, and thus for a time removed from the centre of political life. Meanwhile[2] Papirius Carbo had left the popular party, of which he was one of the most able leaders, and had joined the nobles with all the zeal of a renegade. Marcus Fulvius Flaccus, the third member of the commission of triumvirs, had been raised to the consulship. Whether the commission was reconstituted by the election of other men we are not informed. We know so little of the party contests of the time, that we cannot tell how it was that a man so stubborn and unmanageable as Fulvius Flaccus was elected consul. Perhaps it was family influence or a momentary reaction in favour of democracy that favoured the election; perhaps the nobles thought that as they had got rid of C. Gracchus by sending him as quæstor to Sardinia, so they could remove Flaccus

[1] Cicero, *De Off.* iii. 11. It is not likely that by this resolution all non-citizens were at once ordered to quit Rome. A measure of this kind would have been too harsh, and glaringly unjust. For the law allowed foreigners to settle, and to carry on business in Rome. The resolution moved by Pennus probably empowered the magistrates to turn out non-residents who appeared in one way or another to endanger public order, or threatened to assume political privileges by taking part in assemblies from which they were legally excluded.

[2] The precise time cannot be fixed.

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from Rome by letting him have a consular command in some distant province. If this was their intention, they succeeded. The senate sent him to Transalpine Gaul to carry on a war with the tribe of Salluvians. Yet before Flaccus started on this expedition he found time to move the great question which the democratic party had at heart—the admission of the Latins to the Roman citizenship.[1] But he was prevailed upon by the senate to drop the matter for the present. Perhaps he foresaw that he would not be able to overcome the opposition to be expected from the nobility and from the great mass of the people.

Disturbance among the allies on the withdrawal of the proposal of Flaccus.

Nevertheless the proposal of Flaccus had a fatal effect by causing a partial outbreak of that great conflagration which was destined about thirty years later to devastate all Italy. The Latins were all astir at the news that no less a man than one of the consuls had proposed to give them the franchise. Their impatience could be restrained no longer, and when they heard that the proposal had been withdrawn, they were ready to fly to arms. The colony of Fregellæ, on the river Liris, was bold enough to renounce her obedience. Fregellæ might have been called the most loyal of all the Latin colonies. When in the course of the Hannibalian war twelve of them had shown signs of disaffection and had refused to furnish their usual contingents, it was Marcus Sextilius, the chief magistrate of Fregellæ, who headed the deputation of the eighteen faithful colonies to the Roman senate and spoke those memorable words expressive of their

[1] Valer. Max. ix. 5, 1: M. Fulvius Flaccus cum perniciosissimas rei publicæ leges introduceret de civitate danda et de provocatione ad populum eorum qui civitatem mutare noluissent, ægre compulsus est ut in curiam veniret. Deinde partim monenti partim oranti senatui, ut incepto desisteret, responsum non dedit. Appian, *Bell. Civ.* i. 21: καί τινες εἰσηγοῦντο τοὺς συμμάχους ἅπαντας, οἱ δὴ περὶ τῆς γῆς μάλιστα ἀντέλεγον, εἰς τὴν Ῥωμαίων πολιτείαν ἀναγράψαι, ὡς μείζονι χάριτι περὶ τῆς γῆς οὐ διοισομένους. καὶ ἐδέχοντο ἄσμενοι τοῦθ' οἱ Ἰταλιῶται προτιθέντες τῶν χωρίων τὴν πολιτείαν. συνέπρασσέ τε αὐτοῖς ἐς τοῦτο μάλιστα πάντων Φούλβιος Φλάκκος ὑπατεύων ἅμα καὶ τὴν γῆν διανέμων. ἡ βουλὴ δ' ἐχαλέπαινε, τοὺς ὑπηκόους σφῶν ἰσοπολίτας εἰ ποιήσονται. καὶ τόδε μὲν τὸ ἐγχείρημα οὕτω διελύθη.

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unwavering attachment, words which ought to have remained engraved in every Roman's heart, and to have won for the colonists just or at least generous treatment.[1] Fregellæ, now at the head of the alienated and discontented Italian cities, and venturing to rouse the anger of Rome, drew upon itself a dreadful punishment.

Destruction of Fregellæ.

Unfortunately there was no unanimity among the colonists.[2] As we have seen, the interests of the rich landowners and of the poor peasants were opposed to each other, and split up the population into two hostile factions. Whilst the lower orders rose in arms and compelled the Romans to send troops against them under the prætor Opimius, a traitor was found, no doubt in the ranks of the opposite party, one C. Numitorius Pullus, who delivered the town into the hands of the Roman prætor.[3] The incipient conflagration was stamped out with Roman firmness and severity. Fregellæ was destroyed,[4] and a new colony of Roman citizens, called Fabrateria, was established in the neighbourhood. We are not informed what dimensions the insurrection of the Latins had assumed, and whether other Latin communities besides Fregellæ were implicated in it or punished, or, as seems not unlikely, prevented from joining the insurgents by a well-timed concession and the granting of their demands. The circumstance that the distant town of Asculum in Picenum[5] is mentioned as implicated, would tend to show that the hostility shown by Fregellæ was not isolated, and that, as in the second rising of the Italians, the conspiracy spread over the greater part of the peninsula. On that later occasion the Romans prudently disarmed a number of their opponents by granting their demands. Perhaps a similar policy was adopted in 125 B.C., in spite of the

[1] Vol. ii. p. 364.

[2] We have noticed the division of the Italians into two opposite parties above, p. 415.

[3] Cicero, *De fin.* v. 22, 62. *Philipp.* iii. 6, 17.

[4] Livius, 60: L. Opimius prætor Fregellanos, qui defecerant, in deditionem accepit, Fregellas diruit.

[5] Aurel. Vict. 65.

severity shown in the treatment of Fregellæ. The number of citizens, as shown by the census of that year, which probably was not made before the year 124 B.C., exhibits a very considerable increase, which may have been caused by the reception of new citizens from Latin or Italian allies.[1] At any rate the policy of the senate seemed for the present to establish peace. The question of the admission of all the Italians to the rights of Romans was adjourned, and finally solved in favour of the claims of justice.

[1] Compare Lange, *Röm. Alterth.* iii. 27. Mommsen's explanation of the increase in the number of citizens is unintelligible (see above, p. 408, note 1).

CHAPTER IV.

THE FIRST SLAVE WAR IN SICILY.

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Apparent success of senatorial government.

THE firmness of the nobles had overcome all the dangers which the abuse of power and the excess of conservatism had conjured up. It seemed that, after all, the existing institutions to which the ruling party clung with such obstinacy had stood a severe test, and were not likely to be overthrown or modified by succeeding reformers. In the same period the republic had passed successfully through an economical crisis, which by itself alone seemed sufficient to cause the greatest anxiety. Whilst the Roman armies were still engaged in Spain trying to reduce the stubborn defenders of Numantia, the oldest and most thoroughly pacified province was ravaged by insurgent slaves. For the first time the periodical disturbances caused by the increasing number of slaves assumed the proportions of an armed insurrection and a regular war, a war of which it is difficult to say whether it was more ruinous to the prosperity of Sicily or more humiliating for the Roman administration and the Roman arms.

Prevalent blindness as to the effects of slavery.

Of all the phenomena of the intellectual life of the ancient world the most surprising is perhaps this, that the greatest thinkers had no sense of the injustice of slavery. Nor were the social, political, and economical dangers caused by slavery ever widely and generally apprehended. It was but here and there that too great a number of slaves was thought to be undesirable and injurious to the state, especially as it counteracted the increase of freemen and diminished the proportion of citizens capable of bearing arms. The Gracchi were among the few who

had an insight into the working and effects of these causes, and their reforms were partly suggested by their fears of the mischief, direct and indirect, resulting from slavery.

The supply of slaves.

As the Romans did not recruit their armies from the provinces, the disproportionate increase of slaves in them did not appear to involve any immediate danger to the state. Nobody, it seems, apprehended any direct danger such as a rising in mass. Thus during the long time of undisturbed peace which Sicily had enjoyed since the fall of Syracuse (in 211 B.C.) native Sicilian landowners as well as Italian settlers had carried on their farming operations on the most profitable and approved plan, which was that recommended by Cato, and based on the employment of slaves. The frequent wars carried on in Spain, Gaul, or the East furnished the slave-dealers who followed the Roman armies with a plentiful supply of hardy barbarians, and in peace time the slave-markets of Delos and other places were kept regularly supplied by ever-increasing bands of kidnappers and pirates. The landowners of Sicily bought up large numbers of slaves drawn from all nations round the Mediterranean, but especially natives of Syria, who seem to have been regarded as a particularly useful class. All field-labour was performed by these slaves, working in regular gangs under overseers, and sometimes branded or chained and kept at night in hideous pens or sheds like condemned prisoners. A peculiar class of slaves were those who were employed as herdsmen. They were selected from among the most vigorous and active; and the nature of their work made it necessary to allow them a certain degree of freedom from restraint. Many of them were mounted, and roamed about the island with their herds from pasture to pasture. Being left by their masters to provide their living for themselves,[1] they did not scruple to levy black mail and to waylay and plunder travellers. As the Roman governors did nothing for the

[1] Diodor. xxxiv. 2, 2, 28 ff.

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internal security of the island, nobody was safe from such depredators who could not protect himself. The large landowners and the rich people in general of course suffered less; but the poorer sort were constantly harassed, and driven at last to make common cause with the robbers.

Cruelty of slave-holders.

Slaveholders naturally grow hard, pitiless, and cruel. The finer feelings of the human heart are blunted by the daily spectacle of brutal violence and of the callousness and savagery produced by it. We cannot be surprised, therefore, that among the Sicilian landowners there were such men as Damophilos of Enna, who, whilst revelling in all sorts of sensual pleasures, delighted in tormenting their wretched slaves.[1] A mass of deadly hatred was heaped up everywhere. Thousands of desperate men awaited only the signal for rushing upon their tormentors and wreaking their long-suppressed revenge.

Outbreak of the slaves of Damophilos at Enna.

In the town of Enna a certain Antigenes had a Syrian slave called Eunus,[2] a crafty and versatile fellow who practised the tricks of a conjuror. He would spit fire and interpret dreams, and was often employed by his master to amuse his guests, while among his fellow-slaves he acquired the reputation of a prophet and a worker of miracles. He was consulted by the slaves of Damophilus, who had formed a regular conspiracy; and he assured them that the gods favoured their plans and would assist them. Suddenly the slaves to the number of four hundred broke into Enna from the country and made themselves masters of the place, which would have been impregnable if it had not been carelessly guarded. They murdered the inhabitants with the exception of the artisans capable of working at the fabrication of arms; and these they compelled to work at their trade. Damophilus was dragged into the theatre and cut in pieces before the eyes of the assembled slaves. His wife Megallis was tortured to death by the female slaves, and her body cast down from

[1] Diodor. xxxiv. 2, 10, 34 ff.

[2] Florus, iii. 19. Diodor. xxxiv. 2.

the rock on which the town stood. Yet in their excess of barbarous revenge the exasperated murderers exhibited signs of discriminating justice and humanity. The daughter of Damophilus, who had always been kind to the slaves and had gained their affection, was not only spared and protected from ill-usage, but actually sent away under a safe-conduct to her relations at Catana.[1]

Designs and objects of the slaves.

By their rapid success the band of insurgents was soon swelled to many thousands. They began to establish a certain degree of order and organization, and it was clear that they aimed at more than mere revenge and bloodshed. Their intention was to form an independent community and to expel the Romans from the island. The Syrian slave Eunus was formally elected to be their king, and he proceeded forthwith to adopt the insignia of royalty, to surround himself with a court and council after the fashion of the kings of his native country, and to call himself Antiochus. Nor was he devoid of shrewdness. Conscious of his inability to conduct military operations, he appointed a Greek named Achæus to be general in chief, and thus he succeeded in obtaining possession of the open country and even of several towns, after defeating a body of eight thousand local militia collected by a Roman prætor. The power of the insurgents soon increased so considerably, that without a strong military force the restoration of order became hopeless. The disturbance assumed the dimensions of a war. Tauromenium and even the important city of Messana fell into the hands of the slaves, and simultaneously a second band of insurgents was formed in the south of the island, under the command of an able leader called Cleon, who seized Agrigentum, the largest town on the coast. The Romans hoped that jealousy and discord between the two bodies of insurgents would aid them in putting down the revolt. But Cleon showed more wisdom than could have been expected; he acknowledged the supreme authority of king Antiochus, and placed himself

[1] Diodor. xxxiv. 2, 39.

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under his orders. On the whole the slaves showed political and martial ability not unworthy of their high aspirations. They established by degrees a kind of regular government in the island. Whilst the poor freemen who had joined them in great numbers were bent on laying waste the country and destroying houses and property, the slave-king gave orders to prevent all useless destruction of capital, and to save all that could be saved for the benefit of the new people and state which he hoped and desired to govern.[1]

Continued successes of the slaves.

Thus the insurgents maintained themselves for a few years and defied the efforts of the Romans to put them down by military force.[2] Several prætors were defeated by them in succession. In the year 134 B.C. the senate despatched a regular consular army under C. Fulvius Flaccus, the colleague of Scipio Æmilianus, who was then carrying on the war in Spain against Numantia. He, too, failed to produce any decisive results. At length a turn in favour of the Romans took place. Lucius Calpurnius Piso, the consul of 133 B.C., succeeded in driving the insurgents out of Messana and in killing eight thousand of them.[3] But this did not suffice to restore even the honour of the Roman arms. It seems that the discipline of the legions was as relaxed in Sicily as it was found to be about the same time in Spain.[4] We hear that the consul was obliged to punish a troop of horse by degrading them to the rank of slingers, because they had allowed themselves to be surrounded by their enemies, and had not shrunk from purchasing their lives by surrendering their arms.[5]

[1] Diodor. xxxiv. 2, 48.

[2] The date of the outbreak of the war cannot be fixed with accuracy. According to Livy (*Epit.* 56) it must have been going on for some time, when Fulvius Flaccus was sent to Sicily in 134 B.C. He says: Bellum servile, cum opprimi a prætoribus non potuisset, C. Fulvio consuli mandatum est. According to Florus (iii. 19) the four prætors, Manlius, Lentulus, Piso, and Hypsæus, were beaten by the slaves one after the other.

[3] Orosius, v. 9.

[4] Vol. iii. p. 404.

[5] Valer. Max. ii. 7, 9.

CHAP. IV.

Suppression of the revolt.

In the year 132 B.C., in which the Spanish wars were terminated by the taking of Numantia, the Sicilian slave insurrection also was at last crushed. Publius Rupilius, one of the consuls of the year, disposed of an army sufficiently large to drive the insurgents from the open country, and to blockade them in their two strongholds, Enna and Tauromenium.[1] Both of these fell into his hands by treason, and he was now able to inflict on the surviving prisoners those exemplary punishments which in the opinion of the Romans were calculated to prevent a repetition of the mutiny. It is said that twenty thousand slaves were put to death. Cleon and the principal leaders were slain in battle. The wretched Eunus, no longer king Antiochus, tried to escape, but was taken, and would have been reserved to grace the triumph of Rupilius if a Roman consul could have lowered himself so far as to triumph over revolted slaves. He was accordingly cast into prison to linger until he was eaten up by vermin.[2] All open resistance was at an end with the taking of Enna, and the island was in a short time completely brought back to order. Rupilius, with the assistance of a council of ten senators, reorganized the administration, and put it on a sound and lasting foundation.[3]

Multiplication of conspiracies.

It was high time that the Sicilian insurrection should be suppressed, for at the same time indications appeared in different parts of the empire showing that disaffection among the slaves was general. This disaffection had actually led to several conspiracies. Risings had been attempted or had broken out in the capital itself, at Minturnæ and Sinuessa, in Attica and in the island of Delos, the greatest slave market in the eastern seas. All these attempts were put down with the most unmitigated severity, by the execution of hundreds and thousands. For a time the voice of oppressed humanity was silenced. The wretched slaves slunk back into their noisome pens,

[1] Liv. 59. Oros. v. 9.
[2] Diodor. xxxiv. 2, 23.
[3] Cicero *in Verr.* ii. 13, 15, 16.

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and again offered their backs to the scourge and their feet to the iron ring. But after the interval of a few years a second servile war devastated Sicily. At last (73 B.C.) Italy itself resounded with the ferocious war-cry of mutinous slaves; and Spartacus, their leader, swept like a conqueror over the length and breadth of the country, renewing almost the terrors of the Hannibalic war.

CHAPTER V.

THE KINGDOM OF PERGAMUM.

CHAP. V.

Opportuneness of the bequest of Attalus.

WHEN the agitation of Tiberius Gracchus was at its height, and the impoverished peasantry of Italy were hoping for help from the state, the unexpected but most welcome news reached Rome from Asia Minor that the Roman people had been nominated heir to one of the richest kingdoms of the East, and to the fabulous wealth of a royal treasury. The last of the race of Attalus had died childless, and had in his will offered all he possessed to the great republic whose clients and dependent allies his predecessors had been. At a time when the oldest Roman province, harassed by the insurgent slaves, had practically ceased to be a dependency, and instead of supplying an ample revenue was causing a serious drain upon the resources of the republic, and whilst a small mountain stronghold in Spain defied the best Roman armies and the ablest general, the richest portion of Asia, with numerous flourishing cities, fell like a ripe fruit, without toil or trouble, into the lap of the Roman people. Eudemus, a Pergamenian envoy, arrived in Rome with that wonderful document, the will of the late king, offering a kingdom for acceptance, and, as was to be expected, he did not meet with a refusal.

Probable fabrication of the will by a Roman party in Pergamum.

Eumenes II., the faithful ally of Rome in the wars of Antiochus and Perseus, had been rewarded for his services with ingratitude and contumely.[1] At his death his son Attalus, surnamed Philometor, was still a child, and the throne was occupied by his brother Attalus II., the favoured client of Rome, who acted as faithful guar-

[1] Vol. iii. p. 272.

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dian and regent for his nephew, and left him the kingdom unimpaired in 138 B.C. The new king, Attalus III., was a man of very different character from his predecessors on the Pergamenian throne. All the former kings had been distinguished by prudence, self-control, gentleness, and generosity, but above all by a sincere attachment among the members of the ruling family. The third Attalus was merely an infuriated tyrant. He began by summoning into his palace the tried and faithful servants of his predecessor, and all his nearest relations. They were all traitors in his eyes, or liable to become traitors, and he caused them to be assassinated by his body-guard of barbarians.[1] The government of his country gave him little concern. He spent his time in frivolous amusements, trying his skill in modelling in wax, in casting metal statues, and in cultivating his garden. Fortunately he did not live long to misgovern his land. He died after a reign of five years, leaving behind him a curious testament which he was said to have made in favour of the Romans. That such a disposition should in truth have been made by a man like Attalus Philometor, who never gave a thought to the cares of government or to the future destiny of his country, is hardly probable.[2] In Pergamum, as in every allied or vassal state, there existed an influential Roman faction, and there seems to be no reason to doubt that members of this faction, in concert with Rome, fabricated that strange document which disposed of a whole country and people as if they had been the private property of the reigning prince.[3] It may be that the annexation of Pergamum to Rome was under the

[1] Diodor. xxxiv. 3.

[2] In the letter which according to Sallust (*Hist. frg.* iv. 8), Mithridates wrote to Arsaces, he says of the Romans: Simulato impio testamento filium eius (sc. of Eumenes) Aristonicum, quia patrium regnum petiverat, hostium more per triumphum duxere.

[3] According to the short statement of Livy (*Epit.* 59), Pergamum was declared by the testament to be free. In the Roman official language, as we know, the word 'free' had a peculiar signification, very little connected with freedom. It meant simply that royal or monarchical government should cease.

existing circumstances the best thing for the country, for it guaranteed it from the predatory wars of the neighbouring kings of Bithynia, Paphlagonia, Cappadocia, and Pontus, which would have wasted it, and the result of which would have been the interference, and after all the dominion, of Rome. But the testament of Attalus was but a transparent screen for the ambitious policy of Rome, and an evidence of reckless disregard of public opinion. They took under the flimsiest pretext of right what they knew that nobody had the courage or the power to contest. But whilst all the neighbouring potentates looked on with apparent indifference, and whilst the Greek cities within the late kingdom of Pergamum submitted almost without an exception to be transferred to the dominion of the great republic, the title of Rome and the validity of the testament were disputed by an adventurer, who, chiefly owing to the errors committed by the senate, and the blunders and vices of Roman generals, succeeded in organizing a desperate resistance, and in keeping the Romans out of possession for the space of nearly four years.

The house of Attalus was not quite extinct. A natural son at least was left, the offspring of Attalus II. and an Ephesian girl, the daughter of a musician. This bastard of the royal house, called Aristonicus, had spirit enough to claim the succession in opposition to the whole power of Rome. Fortunately for him the internal commotion caused by Tiberius Gracchus so much engaged the attention of the state, that the affairs of the East were not taken in hand at once with sufficient energy. The news of the death of Attalus and of the disposition made in the testament had reached Rome in the course of the year in which Tiberius Gracchus was tribune, and he at once seized the opportunity for offering to the impoverished people a share in the splendid legacy. But soon after he met with his fate, and the victorious senate had in their hands the disposal of the new acquisition. Without apprehending the least difficulty, they despatched an em-

The Roman plan thwarted by Aristonicus.

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bassy to Asia to take formal possession of the new province, and availed themselves of this opportunity for removing temporarily and keeping out of sight Scipio Nasica,[1] who had incurred the odium of leading the attack on the murdered tribune.[2] But they soon discovered, as on a former occasion, when Macedonia was to be annexed in 149 B.C.,[3] that other means were required to make good their claim, and to silence a formidable opposition based on national feelings.

Operations of Aristonicus.

Whilst the pretensions of Aristonicus found no support among the Greek cities, with the single exception of Phocæa, the greatest zeal for the Roman cause was exhibited by the Ephesians, who defeated the pretender in a sea-fight near Kyme. Aristonicus hereupon withdrew into the interior of the country, and summoned the slaves to liberty and to a general attack upon the owners of property.[4] Thus the servile rebellion, which at the same time devastated Sicily and threatened to break out in several localities of Italy and Greece, actually spread to Asia, and the great social and economical questions of the day began to be mixed up more and more with political and international questions, causing great and embarrassing complications. Aristonicus, with the help of his new allies, succeeded in obtaining possession of several large towns, such as Thyatira, Apollonia, Myndus, Colophon, and the island of Samos,[5] though the kings of Bithynia, Paphlagonia, Cappadocia, and Pontus remained in alliance with Rome. He seems to have been not far from accomplishing his ambitious designs.[6] The insurrection

[1] Valer. Max. v. 3, 2.

[2] On the death of Licinius Crassus, which took place soon after, he was raised to the dignity of Pontifex Maximus, a fact which shows that he and his party had no occasion to submit to any popular reaction. His mission to Asia cannot therefore be looked upon as entirely a sort of exile. It was an honourable and important public charge.

[3] Vol. iii. p. 293.

[4] Diodor. xxxiv. 2. Strabo, xiv. 1, 38.

[5] It seems that the capital of Pergamum, which contained the royal treasures, did not fall into the hands of the rebels, nor was it even threatened. Otherwise a fact of so much importance would have been stated.

[6] Justin. xxxvi. 4: cum iustus iam rex videretur, &c.

assumed by degrees the proportions of a war, and at last compelled the Roman senate to adopt vigorous measures for the restoration of order and for securing their new possession.

Determination of the Romans to prosecute the war with vigour.

In the year 131 B.C. it was resolved to send one of the consuls with a considerable military force to Asia. The general opinion in Rome was that the war would not be attended with any risk or difficulty. At the same time it was expected that in so rich a country as Asia there would be more than the usual chance of booty and plunder. Moreover the fabulous treasures of Attalus were to be brought home. Each of the two consuls of the year accordingly coveted the command in the East. One of them, Lucius Valerius Flaccus, was at the same time flamen of Mars; the other, Publius Licinius Crassus Mucianus, was Pontifex Maximus. According to the old sacred law neither of them was able to leave Italy, and the command of the army ought therefore to have been given to somebody else. Scipio Æmilianus, the destroyer of Carthage and Numantia, would have been the proper person, and his name was actually proposed. But the chief pontiff, Licinius Crassus, was determined not to be disappointed, and used all his influence to set aside his rivals. By virtue of his pontifical office he threatened to impose a fine on his colleague, the flamen of Mars, if he should accept the command in Asia. Being on the popular side, and in a way a partisan of Gracchus, he opposed Scipio on the ground of his hostility to reforms. Perhaps he also had recourse to direct bribery, for which he had ample means. For wealth was one of the five 'good things' which he is said to have possessed, the other four being his nobility, his eloquence, his knowledge of law, and his supreme pontificate.[1] By a formal resolution of the tribes the conduct of the war against Aristonicus was conferred

[1] Gellius, i. 13: Crassus a Sempronio Asellione et plerisque aliis historiæ Romanæ scriptoribus traditur quinque habuisse rerum bonarum maxima et præcipua, quod esset ditissimus, quod nobilissimus, quod eloquentissimus, quod iuris consultissimus, quod pontifex maximus.

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upon him, notwithstanding his disqualification as pontifex, and he proceeded to Asia at the head of a well-appointed army.[1] But, unfortunately, one very important quality was missing in the good things that he possessed. He was no great general, or else his military capacity was swayed by his avarice and his ambition. He kept his eyes fixed more on the treasures of Attalus than on the war,[2] and his proud and overbearing conduct seemed calculated to alienate the feelings of the people of the new province.[3]

Defeat of Crassus. Fall of Aristonicus.

Of his military operations hardly anything is known, except that he was finally surprised on a march by Aristonicus, routed, and met his death at the hand of a common Thracian mercenary.[4] It was not till the following year, 130 B.C., that Aristonicus was conquered by the consul Marcus Perpenna, driven into Stratonice, and compelled by hunger to surrender.[5] This put an end to the insurrection. Nevertheless Manius Aquillius, consul of the following year (129 B.C.), made all haste to cross into Asia with the hope of getting for himself a part of the booty and glory, and, if possible, the claim for celebrating a triumph. The result of this impatience would have been angry disputes between him and Perpenna, to whom the credit of the whole affair really belonged, if the latter had not opportunely died at Pergamum, leaving to his

[1] Orosius, v. 10: cum instructissimo exercitu.

[2] He was, according to Justin. xxxiv. 5, intentior Attalicæ prædæ quam bello.

[3] At the siege of Leucæ he was in want of a strong beam for a battering ram. Remembering to have seen two beams suitable for the purpose in the allied town of Elæa, he ordered the owner of them to send him the longer of the two. The man thinking that the shorter beam would answer the purpose better, and was moreover less troublesome to transport, sent it instead of the one that had been required. Crassus was highly exasperated at what he called disobedience to his orders, sent for the offender, and caused him to be stripped and scourged. Gell. i. 13, 10.

[4] Valer. Max. iii. 2, 12. Flor. ii. 20. This happened at the time when the consuls for the following year (130 B.C.) were already elected. See Meyer, *Pergamenisches Reich*, vii. 3. Crassus therefore had the command in Asia for nearly a whole year.

[5] Eutrop. iv. 20: Acie victum Aristonicum apud Stratonicen civitatem, quo fugerat, fame ad deditionem compulit.

successor, along with a few trifling remnants of the war,[1] the formal title of conqueror. The unhappy Aristonicus was brought to Rome, was led in triumph, and paid with his life the penalty for his ambitious designs.[2]

Death of Blossius of Cumæ.

More fortunate than Aristonicus was the philosopher Blossius of Cumæ, the teacher and friend of Tiberius and Caius Gracchus, who, after the overthrow of the democratic party at Rome, had fled to Asia and had joined Aristonicus. When fortune here too had declared against the cause which he had espoused, he preferred to die by his own hand rather than wait for a Roman executioner. Thus he was spared the agony of witnessing the premature death of the younger also of his noble pupils.

Formation and regulation of the province of Asia.

The province of Asia was now safe in Roman keeping. Aquillius, with the aid of a senatorial commission, regulated its boundaries and settled the administration.[3] Rome possessed now, in addition to her provinces in Europe and Africa, one in the third great division of the ancient world. It received the name of the whole continent just as the conquered Carthaginian territory had been called Africa. The treasures of Attalus and the Pergamenian kingdom were absorbed by Rome, and became the booty of the victorious nobility; they contributed to increase the internal discord, and to spread into wider circles the taste for extravagance and luxury hostile to the republican spirit of the ancient time.[4]

[1] Florus, ii. 20. Aquillius Asiatici belli reliquias confecit, mixtis veneno fontibus ad deditionem quarundam urbium. If we can credit this last information, Aquillius carried on the war, not like a Roman but like a savage.

[2] Velleius, ii. 4.

[3] Strabo, xiv. 38. Μάνιος δ' Ἀκύλλιος ἐπελθὼν ὕπατος μετὰ δέκα πρεσβευτῶν διέταξε τὴν ἐπαρχίαν εἰς τὸ νῦν ἔτι συμμένον τῆς πολιτείας σχῆμα. However, as Meyer has observed (*Pergamenisches Reich*, 7, 5), it is probable that both Sulla and Pompeius made several alterations in the organization of the province.

[4] Attalic pomp and Attalic wealth became henceforth proverbial, as is seen from expressions like regni Attalici opes, Justin. xxxviii. 7, 8; Attalicæ conditiones, Horat. *Od.* i. 1, 12; Attalicæ vestes, Propert. iii. 18, 19; Attalica aulæa, Propert. ii. 32, 12, and the word Attalica to designate cloth wrought with gold.

CHAPTER VI.

CAIUS GRACCHUS.

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Disinterested patriotism of the Gracchi.

If the zeal displayed by Tiberius Sempronius Gracchus in his schemes of reform cannot fail to engage our warm sympathy and almost affection for the courageous, noble-hearted, and ill-starred young enthusiast, we must in a still higher degree respect and pity his younger brother Caius, who, undaunted by the fate of his predecessor, took up the same policy a few years later, and endeavoured to complete the interrupted reform on a grander scale and a more comprehensive plan. It seemed that the members of the Sempronian family had, like the Valerii and the Porcii, proposed to themselves as their special task to elaborate the public law of Rome in a particular direction. They had an object in view which they tried to realise without the least motive of selfishness or personal interest, animated exclusively by an ardent sympathy with their suffering fellow-citizens and an intense patriotism. Caius Gracchus, it is true, was not always free from passion. He was sometimes carried away by feelings of hatred and revenge; but when we consider how fierce the struggle was in which he was pitted against powerful enemies, when we bear in mind that his political opponents were the murderers of his brother, we shall not cool in our admiration for the man, whatever ground we may have to differ from him in his political opinions.[1]

Caius Sempronius Gracchus had grown up under the

[1] Dio Cassius, *frgm.* 85, says of Tiberius ἀπ' ἀρετῆς ἐς φιλοτιμίαν καὶ ἐξ αὐτῆς ἐς κακίαν ἐξώκειλεν; of Caius he says παραχώδης δὲ φύσει καὶ ἑκὼν ἐπονηρεύετο.

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Education of Caius Gracchus.

same influences as his elder brother. Like him, he had received an education from his mother Cornelia and his Greek teachers Blossius and Diophanes, which made him an enthusiast for ideal objects; and he had at the early age of twenty been carried by family connexion and personal feelings into the midst of the most violent political struggles. The choosing of a side was not for him an open question. His birth and education had made him the champion of the cause for which his brother had bled, a cause which now lay prostrate and which he felt called upon to raise and make triumphant. He could not, like other young Romans of noble houses, count upon filling in succession the offices of state from the lowest to the highest, without encountering other obstacles than the competition of rivals and the usual calls on his purse, his eloquence, or his courage. He had from the beginning a higher aim, the regeneration of the commonwealth by the realisation of a genuine democracy, and his eyes were never turned aside to objects which were not directly connected with this aim.

Services of C. Gracchus as quæstor.

After Caius Gracchus had served some years on the committee of triumvirs established for carrying out the land law of his brother, and after having performed the military service required from every citizen of his age, he was in the year 126 B.C. elected to the prætorship, and sent with the consul Lucius Aurelius Orestes to Sardinia, that province in which his father had distinguished himself during his consulship, 177 B.C.[1] Here he gained, it is said, the reputation both of a good soldier and of a conscientious and humane magistrate so thoroughly that the towns of the island in alliance with Rome voluntarily and out of respect for him furnished a supply of winter clothing for the troops, for which the consul had applied in vain.[2] He remained two years in Sardinia, because

[1] Vol. iii. p. 425.

[2] Plutarch, *C. Gracch.* 2. It must be confessed that this story has very much the character of those with which funeral orations in honour of great men were filled. Besides, it is in the highest degree improbable. We are

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the senate prolonged the command of the consul, and it was customary that a quæstor should remain attached to the consul, his superior, as long as the latter continued in command. When the senate resolved to leave Aurelius Orestes for a third year as proconsul in Sardinia, evidently for the purpose of detaining Gracchus in that island, and of preventing him from giving them trouble at home, they found to their cost that they had only accelerated an impending evil. Gracchus left Sardinia and his post without asking for leave, and returned to Rome (125 B.C.) with the fixed resolution to commence his work of reform.

Energy and resolution of C. Gracchus.

This step taken by C. Gracchus shows what we have to think of Plutarch's assertion [1] that he had hailed the chance of serving in Sardinia as quæstor, because, in spite of the entreaties of his friends and of the people at large,

expected to believe that the Sardinian towns lodged a formal complaint in the Roman senate against the intended exaction of the consul, and that the senate gave the unreasonable answer that the consul should think of other means for supplying the wants of his troops. It was not the duty of the consul but of the senate to provide what the troops required. To throw the burden upon him, and at the same time debar him from those resources which he pointed out, would have been a proceeding very unlike what we are accustomed to in the Roman senate. Again, it is most unlikely that any Roman provincials should have ventured to incur the displeasure of a Roman consul at the head of an army, in the way reported of the Sardinians, for the purpose of gratifying a young man who had not the power to protect them from the consequences of their rashness. There is another story of a similar character which seems simply invented for the like object of a funeral laudation. It is related that while C. Gracchus was quæstor in Sardinia, Micipsa, son of Masinissa, sent a message to Rome, and offered to send a supply of corn for the army in Sardinia, to show the respect he had for Gracchus. It is added that the senate was annoyed with the offer, and refused to accept it. Can we really credit the king of Numidia with such a want of political sagacity as this foolish officiousness would imply? What could have been his object in thus giving offence to the ruling nobility? Or was he so unacquainted with the internal affairs of Rome as to fancy that he could, after the collapse of the democratic party, flatter with impunity a man like C. Gracchus, who had so many and such powerful enemies? On the other hand, if the Sardinian army had really been in want of supplies, would the Roman senate have refused to accept it on account of an ill-advised compliment to Gracchus, which they had ample opportunity of making the silly king repent? It is clear that, from whichever side we look at the story, we cannot discover in it the least kernel of historical probability.

[1] Plutarch, *C. Gracch.* 1.

he shrank from political life as likely to be full of danger for him. The story is nothing but one of those poetical and sentimental touches which Plutarch makes use of to interest the reader in his heroes. A still more incredible and fantastic story Plutarch borrowed from Cicero, who related that his brother Tiberius appeared in a dream to Caius and urged him to fulfil his fate, which after all it was vain to oppose, and which required him to lay down his life for the welfare of the people. We cannot be so unjust to a noble-minded man like Caius Gracchus as to believe that superstitious fear or the importunities and expectations of others could determine him to undertake a great political task. He was impelled by very different motives, by genuine sympathy for the suffering race of degenerate Romans, by the enthusiasm and the ideality of his character, which were partly inborn, partly implanted by education, by a firm conviction of his call to the great work, and by the ardour of his youthful blood. It would be a blind misapprehension of the highest attribute of the human soul, the freedom of the will, if we tried to explain the lofty thoughts and heroic deeds of men as the effect of paltry accidental circumstances and external impulses.

Return of C. Gracchus from Sardinia to Rome.

The step which Gracchus had taken by leaving his post in Sardinia without the permission of his superior was, if not positively illegal, yet so contrary to the usual practice, that he was obliged to justify it before the censors. This he is reported to have done so effectively that he succeeded in silencing all obloquy.[1] He told the censors that whereas he was compelled by law to serve ten years as a soldier, he had served twelve, that the law required only one year's service as quæstor and that he had served double that time; that when he started for the province he had taken with him his bags full of money and that he had brought them back empty, whereas it was the practice with others in a similar position, when they came back from their provincial

[1] Plutarch, *C. Gracch.* 2. Gell. xv. 12.

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service, to carry with them wine-jars, which they had emptied of their contents, full of gold and silver.

Charge of instigating the revolt of Fregellæ.

It was no secret in Rome that C. Gracchus had returned from Sardinia with the special object of becoming a candidate for the tribuneship. The optimates, foreseeing another stormy period approaching, attempted to discredit the dangerous demagogue in the eyes of the people, and, if it were possible, to prevent his election. Nothing could serve such a purpose better than a political prosecution, which, even if it failed at last, might cause delay or sow discord in the hostile ranks. Political prosecutions had for some time past belonged to the usual election chicanery,[1] and on the present occasion the ruling party had a very plausible pretext for attacking Gracchus. It was well known that he, like his brother Tiberius, had favoured the cause of the Latin and the other Italian allies, and that the ultimate object of their policy was to receive all the peoples of Italy into the ranks of Roman citizens. He was therefore charged with having instigated the revolt of the colony of Fregellæ, which had been crushed by force of arms in 125 B.C.[2] Gracchus had no difficulty in clearing himself of the charge, for, whatever his sympathies were with the downtrodden subjects of Rome, he would never have sanctioned a revolt.[3]

Election to the tribuneship.

Though C. Gracchus was acquitted, the prosecution had served its purpose to some extent. The people, with all their readiness to support liberal measures for their own benefit, were not disposed to let the Latins and other allies share them, and they looked with suspicion on any measure tending to extend the franchise. C. Gracchus must have lost something of his popularity, for though he was elected to the tribuneship, he did not come out as the first, but only as the fourth in the list. The interest displayed in the election by the people was unusually great, especially among the country population, which poured into the town in such numbers, that many could

[1] Above, pp. 94, 134. [2] Above, p. 422. [3] Plutarch, *C. Gracch.* 3.

not find shelter in the houses, and the market-place proved too small.[1] It is clear that the optimates had succeeded in gaining to their side a considerable number of the lower classes in the town; and C. Gracchus must have perceived that if he would secure the support of the people, he must prove himself their champion by a series of measures calculated to benefit them.

Purposes of C. Gracchus.

By his election to the tribuneship C. Gracchus gained a position which enabled him to carry his projected reforms by legal and constitutional means. For he was not bent on a revolution in the strict sense of the word; he never dreamt of appealing to force, or what has been called in modern times a *coup d'état*. His instruments were to be neither the armed populace nor soldiers, but he hoped by the force of his eloquent reasoning to convince the sovereign people of the justice and advantage of his proposals, and to adopt none but legal means for their realisation.

His eloquence and mode of speaking.

To accomplish this object he was admirably furnished by nature with qualities of mind and heart such as none had ever possessed before him. He surpassed even his brother Tiberius in the art of gaining the sympathy of his hearers and stirring their hearts to their inmost depth. When he was carried away by the ardour of his passion and poured out in volumes the overflowing torrent of his eloquence, he would sometimes forget himself and lose the control of his voice, so that it rose to an undue height. For such occasions he had provided himself with a curious precautionary contrivance. He always had a slave stationed near him who with a few soft notes from a flute warned him when he was about to forget the moderation with which he had set out.[2]

[1] Plutarch, *C. Gracch.* 3.

[2] Plutarch, *Tib. Gracch.* 2. Valer. Max. x. 8, 1: Quoties ad populum contionatus est, servum post se musicæ artis peritum habuit, qui occulte eburnea fistula pronuntiationis eius modos firmabat, aut nimis remissos excitando aut plus iusto concitatos revocando, quia ipsum calor atque impetus actionis attentum huiusce temperamenti æstimatorem esse non patiebatur. Quinctilian (i. 10, 27) calls the flute a 'fistula quam *tonarion* vocant.' Cicero, *De Orat.* iii. 60, 225. Plutarch, *De Cohib. Ira*, 6.

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Gracchus was the first of Roman orators who deviated from the staid, stiff, and solemn mode of delivery which had been customary hitherto in public speaking, and which seems to have been so thoroughly in conformity with the gravity and dignity of the Roman character. Instead of remaining stationary in one part of the public platform and keeping his hands and arms under his toga, he used to walk up and down as if agitated by inward emotion, throwing back his toga and raising his hands in violent gesticulation to emphasise his words. It is related that he was also the originator of another innovation, which was less of rhetorical than of political signification. Instead of observing the custom, hitherto in use, of turning his face towards the comitium, the narrow end of the market-place where the senators and other men of higher position used to stand, he directed his words towards the opposite side of the forum, which was larger than the comitium, and occupied by the great mass of ordinary citizens, as if to indicate that he wished to appeal not to the nobility but to the people.[1]

His powers of persuasion.

The ancient writers are full of admiration for the eloquence of C. Gracchus, and their unanimous testimony leaves no doubt that with him the art of public speaking among the Romans entered on a new phase. In place of the dignified but slow, dry, and jejune compositions of the older orators, which appealed to reason and reflection, was now substituted a richer, more animated and impassioned style, which was brought to the highest degree of perfection by Cicero. Unfortunately only a few scanty fragments are preserved of the oratory of C. Gracchus; but what we know of him is sufficient to prove that if he attained not the highest perfection of the art of speaking, he succeeded in producing the effect at which it aims, which is that of convincing and carrying with him the audience.[2]

[1] Plutarch, *C. Gracch.* 5. A different version recorded by Cicero, *De Amic.* 25, ascribes this innovation to C. Licinius Crassus.

[2] Cicero, *Brut.* 33, 125: sed ecce in manibus vir et præstantissimo ingenio

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Reform the aim of Gracchus, not revolution.

The information which we possess of C. Gracchus and his projects of reform is so fragmentary that we are unable to decide with accuracy what the precise contents and bearing of his several laws were, and to what extent they supplied and completed one another as parts of a comprehensive whole. Nor can we ascertain the chronological order in which they were proposed for adoption. In fact we know no more of them than their general drift and character. So much, however, is certain, that Gracchus did not intend any innovation which would have altered the character of the republican constitution. However deeply his reform was calculated to affect the social condition of all classes of the people, and whatever may have been the influence which they respectively exercised on legislation and government, he left the fundamental lines of the constitution untouched, proceeding in the true Roman spirit of partial reform, and never dreaming of a revolution.[1] He proposed neither to abolish any portion of the old system, nor to introduce a new element. His

et flagranti studio et doctus a puero, C. Gracchus. Noli enim putare quemquam, Brute, pleniorem et uberiorem ad dicendum fuisse. . . . 126: eloquentia quidem nescio an habuisset parem neminem (scil. si diutius vixisset): grandis est verbis, sapiens sententiis, genere toto gravis: manus extrema non accessit operibus eius: præclare inchoata multa, perfecta non plane. Legendus, inquam, est hic orator, Brute, si quisquam alius iuventuti. In his speech *pro Fonteio*, xiii. 39, Cicero calls C. Gracchus nostrorum hominum longe ingeniosissimum atque eloquentissimum. Compare also Cicero, *De Harusp. resp.* 19, 41: secutus est C. Gracchus, quo ingenio, quanta vi, quanta gravitate dicendi! ut dolerent boni omnes, non illa tanta ornamenta ad meliorem mentem voluntatemque esse conversa. *Dialog. de Orat.* 18: sic Catoni seni comparatus C. Gracchus plenior atque uberior, sic Graccho politior et ornatior Crassus. Ibid. 26: malim C. Gracchi impetum.

[1] Mommsen always speaks of 'the revolution' of C. Gracchus, and he calls the changes he effected a work of 'political genius' (*Röm. Gesch.* ii. 377). It seems a misapplication of the term revolution to use it of a political change which is effected with the observance of legal methods, and which leaves every constituted authority in the main intact. One may differ as to the use of the term 'genius,' but if it is to designate the highest quality of the human mind, which is evinced by the act of creating that which did not exist before, we think that only those statesmen are entitled to it whose creations had in them the power of life. Success, which is not always the test of greatness, must be considered the indispensable condition in the case of a statesman to entitle him to be called a man of genius.

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object was to reduce the excessive power of the nobility, which was not in accordance with the old constitutional theory, and to make the sovereignty of the people, which had become merely nominal, a reality.[1] Thus he hoped, not to create a new constitution but to restore the old one, and at the same time to revive the healthy spirit of the olden time, the old vigour, the old virtues, and the old well-being of the hard-working and independent husbandman. In this enthusiasm there was a good deal of self-deception. Gracchus, like most men discontented with the present, looked with too approving eyes on the past, and ascribed to it the perfection which he endeavoured to realise. At the same time he overlooked, or did not pay due attention to, the fact that the Roman state by its great conquests had changed its inmost character, and that the old forms and practices of the peasant community of Latium were no longer adapted to the imperial republic. What he attempted to realise was therefore a chimera; he was an enthusiast and not a cool-headed statesman. However much we may extol his nobility of mind, the purity and unselfishness of his motives, his self-devoting courage, we cannot place him among the great men who shine in history as benefactors of mankind.

Political mistakes of the Gracchi.

In the early period of the republic the tribuneship of the people had been the chief instrument for developing the simple constitution and for adapting it to the increasing wants of the people. When, in course of time, the senate had become possessed of the chief power in the state and had practically taken the government in hand, the tribuneship again was, as we have seen, the instrument which enabled the senate to impart unity to the multiplicity of co-ordinate magisterial powers, and by which the formal sanction of the people was procured for the administrative measures decreed by the governing body. The Gracchi endeavoured to reverse this order, which was the natural result of national growth. They wished to restore to the

[1] This is clearly expressed by Diodorus, xxxv. 25: *ὁ Γράκχος δημογορήσας περὶ τοῦ καταλύειν ἀριστοκρατίαν, δημοκρατίαν δὲ συστῆναι, κ.τ.λ.*

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people the reality of directing power, to free it from the tutelage under which it stood, to do away with that mock sovereignty which consisted in endorsing the decrees of the senate, and to invest the assembly in the forum or the field of Mars with the reality of governing power. Their error consisted in the belief that such a change was possible by returning to the simple forms of the old comitia. They overlooked the necessity of remodelling the Roman people itself by giving the popular assemblies a form which would in reality make them represent the people. Failing in this, they only weakened that form of government which was the only one possible in a large and wealthy republic without representative assemblies, and thereby hastened the advent of the monarchy.

The establishment of a monarchy no part of their schemes.

In this sense, and in this alone, can it be said that C. Gracchus worked for the realisation of a monarchical government. To establish it directly and for himself was as far from his thoughts as from that of any Roman statesman before Julius Cæsar.[1] He could conceive of no other form of government than the republican. He must have seen that the people in their corporate capacity are unable to govern, and that they require a representative to act for them; but he implicitly believed that year after year popular election would place at the disposal of the people such men as himself, who would resign themselves to serve the people without aiming at being their masters, and who would be willing to study and able to discover the popular wants and wishes, and at the bidding of the people to realise them. He thought that a kind of Periclean guardianship of the state might be organized without danger to the permanence of republican institutions. That this was a self-delusion it is easy enough for us to see who have the whole experience of the world's history to teach us. But we can hardly condemn Gracchus because at his time

[1] Mommsen's view (*Röm. Gesch.* ii. p. 117), which is diametrically opposite, amounts to this, that C. Gracchus distinctly aimed at establishing a 'tyrannis' in the form of a tribuneship for life with dictatorial power, or absolute monarchy of the Napoleonic kind. Mommsen is so perfectly convinced of this that he is wroth with all those who 'have no eyes to see it, or refuse to see it.

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and from his point of view he failed to see the error in his calculation.

Proposed law for rendering ineligible to all offices persons deprived of any office by the people.

The first measure which C. Gracchus proposed to take after he had entered on his office of tribune seems to have been prompted partly by a feeling of personal hostility to the enemies of his murdered brother, partly by political considerations. Octavius, the colleague of Tiberius Gracchus in his tribunate, had compelled the latter, by his uncompromising opposition, to violate one of the fundamental principles of the constitution, by obtaining a vote of the people for his deposition from office. This act had always been interpreted by the opposite party as an act of violence, which in truth it was. Caius Gracchus now came forward with a resolution intended to confirm the popular decision against Octavius and, as it were, to remove all doubts of its legality. He proposed that a magistrate removed from his office by the people should become ineligible to any other office. If such a law had been passed and become a part of the constitution, it would have had a most injurious effect. It would have become a means for exercising a kind of ostracism by which any victorious party could have silenced for ever an obnoxious statesman. We are told that C. Gracchus withdrew his proposed law out of deference to the advice of his mother Cornelia, who interceded for Octavius. If this is true, the mother showed more political tact than the son, though perhaps she was chiefly guided by personal feelings of respect for Octavius, whom even his enemies could not accuse of selfish or ignoble motives.

Question of the discretionary powers of the senate.

A second proposal of C. Gracchus, which he passed into a law, was equally suggested by the proceedings in his brother's tribunate. It was a re-enactment, perhaps with new and more stringent clauses, of an old principle, one of the corner-stones of individual liberty, which protected the life of a Roman citizen from the summary jurisdiction of the magistrates, and placed it under that of the whole assembled people.[1] The successive Valerian and

[1] The Sempronian law of C. Gracchus is mentioned in connexion with the

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Porcian laws had from time to time extended this proud privilege of the Roman citizen. In the field alone, and whilst a dictator was at the head of the government, the absolute power of life and death was maintained in the hands of a military commander. But the dictatorship had now been obsolete for a long time, and the senate, in whose hands the nomination of dictators had practically been placed, had lost a powerful engine for the control of the people. Yet it had continued to exercise supreme and unlimited jurisdiction over the allies and subjects of Rome in cases of public danger or urgency by investing the consuls with dictatorial power and appointing commissions to inquire into and punish conspiracies, insurrections, political offences, and in general crimes which endangered the public peace. For the appointment of such criminal commissions the senate was not bound to procure the previous sanction of the people. It was often necessary to act promptly, and it might be necessary to act secretly. The discretionary power of the senate was absolutely necessary, and had been submitted to by the people without jealousy, as far as subjects and allies were concerned.[1] But in the case of Tiberius Gracchus the senate had ex-

Porcian laws as belonging to the same category of laws enacted to guarantee the personal liberty of Roman citizens. Cicero, *Verr.* ii. 5, 63, 163: O nomen dulce libertatis! o ius eximium nostræ civitatis! o lex Porcia legesque Semproniæ! It is strange that Cicero in this passage speaks of the Porcian laws in the singular number, though as we know there were three 'leges Porciæ,' whilst he uses the plural number of the single Sempronian law. In another passage (*Catil.* iv. 5, 10), Cicero mentions 'legem Semproniam.'

[1] Sallust, *Catil.* 29: Itaque quod plerumque in atroci negotio solet, senatus decrevit, darent operam consules, ne quid res publica detrimenti caperet. Ea potestas per senatum more Romano magistratui maxima permittitur, exercitum parare, bellum gerere, coercere omnibus modis socios atque cives, domi militiæque imperium atque iudicium summum habere. Aliter sine populi iussu nullius earum rerum consuli ius est. In this important passage, it is assumed that the right of investing the consuls with dictatorial power by a simple decree of the senate is based on the old constitutional practice, called here 'mos Romanus,' at other times 'mos maiorum,' and it is implied that by it all laws which restrict the military and judicial power of the magistrates for the protection of citizens from summary jurisdiction, the Valerian, Porcian, and Sempronian laws, are temporarily suspended. The same opinion is expressed by Cæsar, *Bell. Civ.* i. 7.

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tended its right over Roman citizens.[1] They had declared that he was guilty of treason to the state, they had accused him of an attempt to seize monarchical power, and, after they had put him to death without a trial, they had nominated a judicial commission for the punishment of the participators in the alleged conspiracy, and this commission had caused a considerable number of sentences of death to be pronounced and executed.[2]

Law of C. Gracchus affecting the murderers of his brother.

Armed with this law, C. Gracchus called in question the legality of the proceedings of the nobility in the suppression of the disturbances ten years before. He proposed a resolution in the assembly of the tribes, to call to account all those persons who, without special authority from the people,[3] had inflicted capital punishment on any Roman citizen. His attack was directed especially against the consuls of the year 132 B.C., who had carried the senatorial decree into effect. One of these consuls, Rupilius, was since dead; but the other consul, P. Popillius Lænas, found himself compelled to leave Rome in order to escape condemnation by a popular tribunal.[4]

[1] Under what pretext a law could be set aside which was passed to guarantee personal liberty to Roman citizens, may be gathered from a passage in Cicero's speech against Catiline (i. 11, 28): nunquam in hac urbe ii, qui a re publica defecerunt, civium iura tenuerunt. With such an interpretation of the law it was only necessary to declare a Roman citizen to be an enemy of his country if it was intended to deprive him of the benefit of the law. Comp. Cicero, *Catil.* iv. 5, 10: At vero C. Cæsar intelligit legem Semproniam esse de civibus Romanis constitutam: qui autem rei publicæ sit hostis, eum civem esse nullo modo posse: denique ipsum latorem legis Sempronie iussu populi pœnas rei publicæ dependisse. It is clear that no laws could be framed to guard against sophistry like this.

[2] Above p. 407.

[3] Cicero, *P. Rabir. Perduell.* 4: ne de capite civium Romanorum iniussu vestro (without authority from the people) iudicaretur.

[4] Plutarch, *C. Gracch.* 4. It has been considered to have been an unfair stretch of the Sempronian law of C. Gracchus, to apply it retrospectively to Popillius Lænas. But as the law was in the main only a re-enactment of older laws which had never been repealed, it seems that the proceedings against Popillius Lænas were justified. Laws with retrospective force are evidently contrary to the principle of right; yet it does not seem that the Romans took any serious objection to them. This is explained from the fact, that the legislative and the judicial bodies were the same. The people were in their right, if they punished an action which they looked upon as a crime, even before they thought it necessary to lay down general rules as to its criminality.

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Increasing strength of the opposition shown to C. Gracchus.

It was not without some difficulty that C. Gracchus succeeded in passing his law and in driving Popillius Lænas into exile. Though he had employed all his oratorical power when he spoke of the brutal murder of his brother, and of the violation of the sacred law which proclaimed the inviolability of the tribune, though he had represented in glowing colours the injustice of the illegal commission[1] presided over by Popillius Lænas, he could hardly carry the people with him. His proposal was accepted by the tribes with the majority of only one tribal vote. So powerful had his opponents become that he could hardly reckon on the support of that very people for whose welfare he was struggling. He found that he could not proceed further with his scheme of reform without gaining a firmer footing in that class on whose votes depended the final success of his agitation.

Law regulating the price of corn for Roman citizens dwelling within the city.

He accordingly came forward with a proposal by which he might justly expect to secure the unfailing gratitude of the Roman proletarians. This was that baneful law for the distribution of corn (*lex frumentaria*) by which it was provided that the Roman citizens dwelling in the city should be entitled to receive every month from the state certain fixed quantities of corn at a valuation fixed considerably below the market price.[2] The way for this fatal innovation had unfortunately been to some extent prepared by previous custom; for it had long been the practice of the Roman government, and had been even considered its duty, in times of general scarcity to mitigate the sufferings of the people by buying up corn at the public expense and conveying it to Rome for distribution among the poor. But these had been extraordinary measures justified by extraordinary circumstances. It had also been the prac-

[1] Festus, *s. v.* Malo cruce and occisitantur. Gell. xi. 13. Plutarch, *C. Gracch.* 3.

[2] Appian, *Bell. Civ.* i. 21. Plutarch, *C. Gracch.* 5. Liv. 70. Diodor. xxxv. 25. According to Mommsen's calculation (*Röm. Gesch.* ii. p. 107) probably five modii every month, each modius for 6⅔ as, or less than threepence, not quite half of a low average market price.

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tice of men of great wealth to exhibit their liberality on festive occasions by distributions of corn, meat, oil, and the like on a large scale. This practice was fraught with far more danger to the public morality of the recipients, for it was not justified as a measure of relief in general distress. It was, in truth, a covert act of bribery, and intended to secure to the liberal donors the high offices of state to which they aspired. The proposal of C. Gracchus was a bribe on the largest scale, and a measure which could not fail to make paupers of the great mass of hitherto independent, self-supporting citizens. What had formerly been an occasional gratuity he proposed to make a regular periodical allowance. It was a measure in the spirit of Greek democracy, in which we may perhaps trace the effect of the doctrines instilled into the youthful Gracchus by his Greek teachers and by the study of Greek philosophers and historians. He wished to pay the Roman people for the labour they took upon themselves in the government and defence of the state by the proceeds which the conquests of the state yielded, just as the citizens of Athens had been paid for attending to their legislative and judicial duties. No doubt he thought it fair that the poor people should have a share in these profits from the provinces, which had hitherto gone to swell only the enormous wealth of the great families. Perhaps he thought to moderate the influence which these families possessed by making the common people to some extent independent of them. Of course he knew that they would become only the more dependent on their leaders. But he did not scruple to secure for himself by an apparent liberality the votes of the city population, as with their assistance only he could hope to carry equally liberal and, as he thought, beneficial measures for the relief of the impoverished peasantry and for the Latin and other Italian allies.

Mischievous nature of the law.

We have no hesitation in calling the frumentarian law of C. Gracchus one of the worst measures ever proposed by a well-meaning statesman. It is needless to say that if it was intended to secure the economical and political

independence of the town population, it entirely failed. On the contrary, it contributed to accelerate that process of deterioration which was making of the people of Rome an abject and contemptible mob, without self-respect, patriotism, and courage, bent only on procuring food and amusements without the trouble of working. In addition to the attractions which every large town offers, and which Rome in particular possessed as the seat of government, as the place of meeting for all legislative assemblies, the scene of innumerable shows, triumphs, games, the capital now acquired, for all the idlers in the Italian towns and villages who could boast of the Roman franchise, the new and potent charm that residence in it was a title to support by the state. The resources of the republic, vast as they were, could not supply the increasing demands on the public treasury, and the public finances, badly managed at the best of times and under the most favourable circumstances, were threatened with hopeless disorder.

Opposition of the nobles.

The objections to the frumentarian law of C. Gracchus were clearly seen and vehemently urged by the optimates, who moreover felt that the law was in the hands of Gracchus a powerful engine for his further schemes of reform.[1] They did not fail to point out the weighty financial and other complications to which it would inevitably lead.[2] But arguments are unavailing for snatching from a wild beast the prey which it has clutched. The sovereign people found it natural and equitable, as their leaders told them, to use their sovereign rights for

[1] Calpurnius Piso, the author of the lex Calpurnia of 149 B.C., one of the most honourable and distinguished men of the time, opposed the frumentarian law with great determination, but in vain. When the law was passed, he tried to discredit it by claiming to participate in the distribution of cheap corn, though, of course, he was not one of the poor, for whom the measure was intended. Cicero, *Tuscul.* iii. 20, 48.

[2] No answer could be made to such objections as Cicero urges (*p. Sest.* 48, 103): Frumentariam legem C. Gracchus ferebat. Iucunda res plebi Romanæ; victus enim suppeditabatur large sine labore. Repugnabant boni, quod et ab industria plebem ad desidiam avocari putabant et ærarium exhauriri videbatur. The narrative of Diodorus (xxxv. 25) sums up in a few bitter words the scope of the law: *τὸ κοινὸν ταμιεῖον εἰς αἰσχρὰς καὶ ἀκαίρους δαπάνας καὶ χάριτας ἀναλίσκων εἰς ἑαυτὸν πάντας ἀποβλέπειν ἐποίησε.*

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their own material benefit, and to devote the public money for their own daily sustenance without distressing themselves about the ways and means necessary for covering the ruinous expense. C. Gracchus, whilst casting on the public treasury obligations such as had never before been dreamt of, proclaimed himself its special guardian.[1] He bore down all opposition, organized the distribution of corn, and caused large magazines (the Sempronia horrea) to be built, where the supplies of grain required for the capital could be stored.

Re-enactment of the agrarian law of Ti. Gracchus.

The frumentarian law of C. Gracchus was in a certain way the appendage or complement of the agrarian law of Tiberius Gracchus. The latter was enacted for the benefit of the peasantry chiefly, or at least of those citizens who were fit and willing to follow a peasant's occupation. The former, on the other hand, provided for the improved position of the town population. From this point of view C. Gracchus could easily justify his law. But, whilst giving relief to the proletarians of the city, he did not lose sight of the country population. The agrarian law of his brother was still formally intact; it had never been repealed or suspended. Caius set to work to overcome the obstructions with which the nobility had hampered its execution. This he did in genuine Roman fashion, by obtaining from the people another formal vote by which the law was re-enacted along with such additional clauses and improvements as experience had shown to be necessary. He probably again invested the land commissioners (*triumviri agris dandis, iudicandis*) with full power of giving final judicial decisions in all contested questions as to what lands were to be treated as private property or public domain.[2] Without the right of deciding this preliminary question, the land commissioners were unable to proceed to the real business of their office. On the motion

[1] Cicero, *Tusc.* iii. 20, 48: C. Gracchus cum largitiones maximas fecisset et effudisset ærarium, verbis tamen defendebat ærarium. Quid verba audiam, quum facta videam? . . . Lege orationes Gracchi; patronum ærarii esse dices.

[2] Liv. 60. Plutarch, *C. Gracch.* 5. Velleius, ii. 6.

of P. Scipio Æmilianus this right, as we have seen,[1] had been taken away. It was therefore absolutely necessary for C. Gracchus now to restore it.

Provisions for making new roads.

The improvement of agriculture in Italy was dependent on the improvement and extension of roads; for without the means of transporting the produce of their fields to remunerative markets the new peasantry would soon have languished and decayed. Perhaps the frumentarian law itself contained provisions for the making of a number of new roads, or possibly a special law was passed (a *lex viaria*) for the purpose.[2] The Romans had, it is true, already excellent roads, radiating from the capital to the south, east, and north of Italy. But these roads had been made from a military point of view, and could therefore but partially serve the purposes of trade. They were intended to bind together the far-stretching dominion of the republic, and to facilitate the movement of troops. It was necessary to open up the fertile districts by convenient roads. This work was undertaken by Gracchus himself with his own peculiar zeal and energy. We are surprised to hear that he could spare time to superintend the work himself, and to give attention to many points of detail, suggesting improvements which are praised as exceedingly ingenious. In the course of these great public works he employed a host of skilled artisans and labourers, who of course looked to him as their employer, and were no inconsiderable addition to the mass of citizens dependent on him for their improved social position.

Proposal for sending out new colonies for purposes of agriculture.

The next step in the great scheme for the improvement of agriculture and of the condition of the agricultural population was the proposal for the establishment of new colonies. Up to this time the main object of the Roman colonies had been the defence of newly acquired territory. In a subordinate degree they also served the purpose of drawing off the surplus population from Rome, and pro-

[1] Above, p. 415.

[2] Comp. Lange, *Röm. Alterth.* ii. p. 642, and *Corpus Inscript. Lat.* p. 79. *Lex Agrar.* 11, 12, 13.

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viding poor citizens with allotments of land. C. Gracchus left the former object altogether out of view, and indeed the need of colonies in Italy specially for military defence seemed to be a thing of the past. The district where he desired to plant his colonies had been fully pacified and safe for many years. In Campania and Apulia Roman settlers could look forward to an undisturbed life amid the peaceful pursuits of agriculture and trade. He proposed to send settlers to Capua and Tarentum, where the state had extensive domains. But he went a step further. The feeling in Rome hitherto had been that Roman colonies should not be established beyond the confines of Italy. The idea of Romanising the provinces in order to assimilate them to Italy and to convert the outlying dependencies into living members of the enlarged community of Rome, this grand imperial idea had never yet been clearly conceived by a Roman statesman. C. Gracchus was its first originator.

Provincial colonies with full Roman citizenship.

At his suggestion his colleague the tribune Rubrius proposed a law for the foundation of a colony in the province of Africa on the very site of Carthage, which had lain in ruins now for more than twenty years. It was decided that in this and all the other colonies Roman citizens and Italian allies should form the body of settlers, but that the distinction between them should cease, and that they should all have the right of Roman citizens.[1] Whereas in the Latin colonies it had hitherto been the practice to allow Roman citizens to take part in them only on condition of losing their superior Roman franchise and descending to the level of the Latins, Gracchus adopted the opposite principle of allowing the Latins to rise to a higher level and to become Roman citizens by taking part in the new settlement. He thereby opened to the Latins and Italians at least one road by which they could obtain that equality with the older and privileged citizens which they had deserved by many years of faithful service and loyal attachment.

[1] Plutarch, *C. Gracch.* 8.

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Measures directly affecting the power of the nobles.

One half of the scheme of C. Gracchus was accomplished by the laws which he passed for the purpose of raising the lower classes of Roman citizens and allies to a condition of improved material well-being, and consequently to a more independent political position. The second half of his task he considered to be the weakening of the nobility. The confiscation of large possessions, which must have crippled many noble families, was of itself not sufficient to accomplish this object. Gracchus proceeded to reduce the political power of the nobility by taking from them certain public functions which, not less than private wealth, were the sources of political influence.

Judicial powers of the senate.

We have seen [1] that the senators, by acting as judges in the more important civil as well as criminal suits, exercised an influence which made them almost the supreme arbiters of every individual citizen's rights and property, and contributed in no small degree to strengthen their political supremacy. They had shamefully abused this right. The courts in which they presided were exposed to every kind of undue influence, even to direct and open corruption. The worst offenders often escaped unpunished. The Roman name became a reproach among the downtrodden inhabitants of the provinces. Confidence in the protection of right and law was shaken everywhere. Whoever promised to sweep away abuses so deeply rooted and so pernicious would be hailed as a benefactor by the great majority of the Roman people and by all the subjects. C. Gracchus undertook it, and we readily give him credit, that the motive which prompted him was not exclusively a political consideration, but his indignation at the systematic commission of wrong and his sympathy with the sufferers. But as a statesman he could not be moved by feelings alone. He knew that by punishing the nobility for their abuse of power, by taking from them the trust of which they had shown themselves unworthy, he would inflict on them a signal

[1] Above, p. 56. *Polyb.* vi. 17, 7.

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defeat and indirectly strengthen the democratic element of the state.

Transference of these powers to the equestrian order.

These were the motives of the judicial law (*lex iudiciaria*) of C. Gracchus. It was enacted that from henceforth the tribunals, which had hitherto been composed of sworn judges taken from the members of the senate, should be differently constituted, the judges being in future taken from the equestrian order.

Importance and significance of the judicial law of C. Gracchus.

It is difficult for us to form an adequate conception of the importance of the change effected by this law. We are not accustomed to look upon the office of a judge or juryman as one of political importance, and we can hardly conceive that the courts of justice should serve the purpose of a ruling class. But in Rome the administration of justice was not severed from the political functions of the citizens by anything like a distinct line. As the people assembled in their comitia, whether centuriata or tributa, for legislative and elective as well as for judicial purposes, and as they were guided in their decisions more by considerations of political expediency than by principles of abstract right, so the senatorial judges had never scrupled to look upon every legal question that came before them as one in which questions of political prerogative were of more importance than questions of right. The taking from the nobility the right of acting as judges was equivalent to paralysing their power in one of the most important aspects.

The equestrian order constituted by C. Gracchus.

The equestrian order destined by C. Gracchus to supersede the senators in the judicial functions had to be created by him for his purpose; but the elements out of which it was created had existed for a long time. The men he wanted were not identical with the knights of the eighteen centuries which formed part of the so-called Servian constitution, or the old comitia centuriata. These eighteen centuries, which had been originally chiefly military, and had made up the cavalry of the legions, consisting of course of young men and serving on horses furnished by the state, still existed in form but were

changed in character. Many of them were only knights in name, being long past the military age; many of them were senators, and enrolled as members of the equestrian centuries only because it was in these centuries that they exercised their right of voting. Thus they had a privileged position, for they voted before the other centuries, and commanded a greater number of votes than their relative strength would justify. But the knights out of whom C. Gracchus proposed to make his equestrian order were men who did not belong to the nobility, but who had the census of the first class, and who by virtue of this census were entitled to perform their military service at their own expense in the more honourable and privileged cavalry, thus forming an intermediate class between the nobility and the great mass of ordinary citizens. Before the law of C. Gracchus this class was not formally constituted as a distinct property class by any equestrian census.[1] Yet it was possible to speak of it as distinguished from the higher and the lower classes, just as we often speak of the gentry or of merchants and bankers as separate bodies, though no legal and tangible criterion marks them from others. When the department of the public revenue had become more important in Rome by the extension of conquests in Italy and the provinces, the system of raising this revenue by farming necessarily called into existence a class of capitalists who singly or in joint-stock companies acted as middle-men between the senate, the chief financial

[1] The prevailing opinion is that an equestrian census had been introduced at some time or other before C. Gracchus, and that he therefore found the equestrian order ready made when he proposed his judiciary law. But for this opinion no kind of proof has hitherto been produced. It does not even appear what purpose or meaning the constitution of a separate equestrian order could have had before the innovation of C. Gracchus created a special class from which the judges or jurymen were to be taken. Nor were they called *equites* at first, but *iudices*, and then the word *publicani* was used; finally the designation *equites* became general. At what time the later equestrian census of 400,000 sesterces was fixed, we are not informed. It is possible that this was done by the law of C. Gracchus, who in all probability conferred also the distinguishing insignia and privileges, the golden ring and separate seats in the theatre (Mommsen, *Röm. Gesch.* ii. p. 112), and may be considered therefore as the author of the equestrian order.

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board, and the public. These men formed naturally a class by themselves, a kind of monetary aristocracy, united by common interests among themselves, and though excluded from the honours and privileges of the official nobility, yet placed in such proximity to them by the influence which wealth procures, that in public esteem and standing they ranked immediately below, and in many respects had common interests.

Probable details of the judicial law of C. Gracchus.

This class of rich and influential men C. Gracchus constituted by a census as a special order, distinct from the senatorial order, and from the rest of the people, and proposed to select from them annually three hundred men to discharge the office of judges or jurymen. Unfortunately the writers from whom we derive our scanty information differ in some important points respecting the detail of the lex iudiciaria. According to Livy's epitome,[1] C. Gracchus proposed to add six hundred knights to the three hundred members of the senate, and, having thus raised the senate to nine hundred, to select the judges from this body. Plutarch[2] agrees on the whole with Livy, only differing in the number of knights, which he states to have been three hundred instead of six. According to this version C. Gracchus would not have transferred the judicial office from the senators to the knights, but he would have reformed the senate by the addition of a certain number of knights, leaving things otherwise as they were. But the remaining authorities, Appian, Velleius, and Tacitus,[3] speak distinctly of a transfer of the judicial

[1] Liv. 60.

[2] Plutarch, *C. Gracch.* 5.

[3] Appian, *Bell. Civ.* i. 22. Velleius, ii. 6, 13, 32. Tacit. *Annal.* xii. 60. Several attempts have been made to account for the contradictory statements of our sources, and even to make them agree. It has been supposed that C. Gracchus, and even Tib. Gracchus, made at different periods different proposals for the new organization of the courts, and that these proposals, which never reached the stage of a perfect law, were erroneously represented as the lex iudiciaria of C. Gracchus. Such was the idea of Mommsen in *Zeitschrift f. Alterth.* 1843, N. 102. The attempt to justify and reconcile the various statements is made by A. W. Zumpt in his *Criminalrecht der röm. Republik*, ii. chap. iv. p. 62 ff. We think it is a waste of ingenuity to justify or explain evident blunders.

duties from the senators to the knights, and this is in reality the only view in accordance with what we know for certain of the policy of C. Gracchus. For an addition of three hundred or six hundred of the most respectable and influential men to the senate would have strengthened this body, which C. Gracchus desired to weaken. Instead of establishing a counterpoise against the senate by the consolidation of the great capitalists as a separate order with special most important functions, he would have connected more intimately the interests of the nobility and the men who farmed the public revenue. Instead of protecting the harassed provinces from the exactions and extortions of the senatorial governors by constituting independent tribunals with equestrian judges for the trial of offences committed by members of the nobility, he would have left the old senatorial courts what they were. Experience had shown that these courts offered no redress of the grievances which the provinces had hitherto suffered. The judges in them belonged to the same class as the offenders whose malversation they were to try and punish. What difference could it have made in the composition of the courts, if to the old senatorial judges some other judges taken from another class had been added? The practice and traditions would have remained unaltered. The old leaven would have infected the new matter. It was absolutely necessary to make a clean sweep; and this Gracchus did by transferring the courts entirely to a new body of judges. Well would it have been for the health of the republic and the prosperity of the provinces, if the new body of judges constituted by Gracchus had proved less corrupt than their predecessors, if the change that he made had also been an improvement. Had it been so, C. Gracchus would have become the benefactor, perhaps the saviour, of the republic, and would really have justified his title to be called a great genius and a consummate statesman.

How short-sighted C. Gracchus was in his favourable estimate of the new class of judges established by him

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The selection of the equestrian order as judges a fatal blunder.

became very soon apparent.[1] By substituting the knights for the senators he cast out the devil by Beelzebub. The capitalists proved to be judges more venal and more accessible to every kind of corrupt influence than the men of noble birth had been. They had only one passion and one thought, the accumulation of wealth. Looking upon all that they undertook as business transactions, they never gave a thought to what they owed to the welfare of the state, or to the interests of those who came to them for justice. No long time passed before corruption and injustice had arisen in the equestrian courts to such an excessive height, that the senatorial courts were regretted as patterns of a pure and honest administration of justice. Not only were the new judges lenient to offenders who belonged to their own order, but they persecuted senatorial magistrates of high-minded principles, if, as happened sometimes, they tried to oppose the frightful extortions

[1] Flor. iii. 17: Equites Romani tanta potestate subnixi, ut qui fata fortunasque principum haberent in manu, interceptis vectigalibus peculabantur suo iure rem publicam. Appian, *Bell. Civ.* i. 22: *τὴν δὲ δωροδοκίαν μεταλαβόντες, καὶ γευσάμενοι καὶ οἵδε κερδῶν ἀθρόων, αἰσχρότερον ἔτι καὶ ἀμετρότερον αὐτοῖς ἐχρῶντο.* This unimpeachable testimony, which Florus and Appian most assuredly did not invent, but copied from trustworthy historians, is directly opposed to the assertion of the forensic advocate Cicero, who, to serve the purposes of his speeches, never scrupled to give that colouring to facts which suited him. He says (*in Verr.* act. i. 13, 38): Cognoscet ex me populus Romanus quid sit, quamobrem, cum equester ordo iudicaret, annos prope quinquaginta continuos, nullo iudice equite Romano iudicante, ne tenuissima quidem suspicio acceptæ pecuniæ ob rem iudicandam constituta sit. Cicero here with great subtlety maintains, not that no bribes were taken by the knights, but that no case of bribery was proved. How it happened that no prosecution for bribery was ever instituted against them, although cases of bribery were ever so numerous, can be seen from the following remark of Appian (*l. c.*): *κατηγόρους δὲ ἐνετοὺς ἐπὶ τοῖς πλουσίοις ἐπήγοντο, καὶ τὰς τῶν δωροδοκιῶν δίκας συνιστάμενοι σφίσιν αὐτοῖς καὶ βιαζόμενοι πάμπαν ἀνῄρουν, ὡς καὶ τὸ ἔθος ὅλως τῆς τοιᾶσδε εὐθύνης ἐκλιπεῖν.* The truth of this remark is proved by the fact that in the year 91 B.C. Livius Drusus thought it desirable to bring in a law by which it should be made possible to punish the judges for taking bribes, and that his suggestion was openly opposed by the knights. It is Cicero himself who furnishes us with this important testimony, in contradiction of his own previous assertion. He says (*p. Rabir. Post.* 7, 16): M. Druso unam in equestrem ordinem quæstionem ferenti, si quis ob rem iudicatam pecuniam cepisset, aperte equites resistebant. Comp. Flor. iii. 12.

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which the farmers of the revenue now practised with impunity under the protection of the supreme courts.[1]

Short-sightedness and delusions of C. Gracchus.

We can hardly doubt that this deplorable result might have been foreseen by a statesman not blinded by prejudice or carried away by a temper too sanguine and passionate. The low, venal, and grasping disposition of the Roman money-lenders, contractors, and farmers of the revenue must have been well known from ample experience.[2] If C. Gracchus thought that such men deserved to be entrusted with an office which more than any other requires perfect integrity and exalted virtue, he showed that he possessed very little of that knowledge of character and the world which to a statesman is as essential as patriotism, honesty, and enthusiasm. The latter qualities C. Gracchus possessed in the highest degree, but as he lacked the former he was doomed to failure in his highest aims.

Diminution of the power of the senate.

If the lex iudiciaria did not secure a better administration of justice, it succeeded at least in weakening the authority of the senate, which was its secondary, perhaps its primary object. By the creation of the equestrian order,[3] all those elements of political influence which lie in wealth and commercial industry, and which had been in former times without coherence and common action, were withdrawn from subserviency to the noble families, and constituted as an independent power, a second head of the state as it were,[4] the consequence of which was an antagonism between the two. C. Gracchus was proud of his achievement,[5] and, as if exulting over the internal

[1] Liv. 70: P. Rutilius, vir summæ innocentiæ, quoniam legatus C. Mucii proconsulis a publicanorum iniuriis Asiam defenderat, invisus equestri ordini, repetundarum damnatus in exilium missus est.

[2] Vol. ii. p. 319.

[3] Plin. *Hist. Nat.* xxxiii. 34: Iudicum autem appellatione separare eum (equestrem) ordinem primi omnium instituere Gracchi discordia populari in contumeliam senatus.

[4] Florus, iii. 17: iudiciaria lege Gracchi diviserant populum Romanum ac bicipitem ex una fecerant civitatem. . . . Senatus exilio Metelli, damnatione Rutilii debilitatus omne decus maiestatis amiserat. Varro, *ap. Nonium*, p. 454: equestri ordini iudicia tradidit ac bicipitem civitatem fecit.

[5] Appian, *Bell. Civ.* i. 22: φασὶ δὲ κυρωθέντος τοῦ νόμου τὸν Γράκχον εἰπεῖν, ὅτι ἀθρόως τὴν βουλὴν καθῃρήκοι.

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discord which would be the consequence of this antagonism, he boasted that he had cast swords and daggers on to the forum for internecine slaughter.[1]

Law for regulating the province of Asia.

The equestrian order consisted, as we have seen, of the great capitalists, a class of people who had thriven in proportion as the Roman conquests expanded the sphere of their activity. C. Gracchus now found means to add to their wealth, and at the same time to facilitate the execution of his frumentarian laws, by a law which he passed for the organization of the provincial government of Asia (*lex de provincia Asia*). When the Romans had acquired this province ten years before, by the alleged testamentary disposition of King Attalus, they had treated it with great mildness, and, as it seems, had imposed no direct taxes. By the law of Gracchus the dispositions made by the senate were set aside, the province was subjected to the payment of annual tithes from the agricultural produce, like Sicily, and it was ordained that the right of collecting these tithes should be let by auctions which were to be held not in the province, as was the case in Sicily, but in Rome. By this process the collection of the revenue became entirely the monopoly of the great Roman capitalists, for it was impossible that any provincial contractor or provincial communities should have a chance in bidding against the associated joint-stock companies of the Roman publicani. The same process of letting the indirect taxes of customs and port dues was adopted.[2] All these transactions were to take place in Rome. The province of Asia, the richest of all, was formally made over to the Roman knights to be treated by them as a private farm.[3] The senate was to have no direct influence. It

[1] Cicero, *de Legib.* iii. 9, 20: C. vero Gracchus runis et sicis iis quas ipse se proiecisse in forum dixit, quibus digladiarentur inter se cives, nonne omnem rei publicæ statum permutavit?

[2] Cicero, *Verr.* iii. 6, 12; *ad Attic.* i. 17, 9. Appian, *Bell. Civ.* v. 4. See Marquardt, *Röm. Staatsverwaltung*, i. p. 180.

[3] The provi ce of Asia surpassed all the others in wealth, and was the most productive for the Roman revenue. Cicero, *pro Leg. Manil.* ii. 6: Certissima populi Romani vectigalia et maxima, quibus amissis et pacis orna-

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was not even allowed occasionally to abate any portion of the sums payable by the farmers of the taxes, a right which the senate had formerly exercised and by which it had kept the farmers in dependence on its authority. The law of Gracchus contains minute rules by which the conditions were fixed, under which the farmers of the revenue might claim a reduction of the sums payable by them to the treasury.

Miserable effects of the measure on the provincials.

It would be interesting to know whether in making these financial arrangements C. Gracchus had in view the prosperity of the province of Asia. If he had, he would have anticipated the equitable principles of the Emperors. But as long as the republic lasted, the provinces were regarded only as possessions whose wealth and resources ought to be devoted to the advantage of the governing state, irrespective of all provincial interests. The new arrangements of C. Gracchus were quite in accordance with this principle. The farmers of the revenue were freed from the control which the provincial governors of senatorial rank or the senatorial judges of the superior courts had formerly exercised. They had little to fear from the courts presided over by men of their own class. Perhaps the malversations of the provincial governors were now to some extent restrained; but in the place of one rapacious plunderer, hundreds of heartless, exacting, cruel harpies were let loose, to spread over the province in every direction, and men who had no other motive but to accumulate money were now invested by law with a kind of authority [1] which gave over the hapless provincial to their hands. The effect soon became apparent. Forty years later, on the outbreak of the war with Mithridates,

menta et subsidia belli requiretis. *Ib.* vi. 14: Ceterarum provinciarum vectigalia tanta sunt, ut iis ad ipsas provincias tutandas vix contenti esse possimus; Asia vero tam opima est et fertilis, ut et ubertate agrorum et varietate fructuum et magnitudine pastionis et multitudine rerum earum quae exportentur, facile omnibus terris antecellat.

[1] Diodor. xxxiv. 25: Γράκχος τῇ μὲν τῶν δημοσιῶν τόλμῃ καὶ πλεονεξίᾳ τὰς ἐπαρχίας ἀπορρίψας ἐπεσπάσατο παρὰ τῶν ὑποτεταγμένων δίκαιον μῖσος κατὰ τῆς ἡγεμονίας.

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the Roman dominion had become so hateful in Asia, that the same people who had at first received the Romans as friends, hailed Mithridates as their deliverer from cruel thraldom and wreaked bloody vengeance on the Italian tax-gatherers and traders settled among them.

The self-imposed task of Gracchus an impossibility.

The substitution of the equestrian for the senatorial order in the supreme administration of justice failed, as we have seen, in producing the results which C. Gracchus had anticipated. It was a sad sign of the utter hopelessness of a moral reform, that no class of men could be found more pure and highminded than those who had been tried and found wanting in civic virtue. We shall see that successive attempts to secure integrity and impartiality met with no better success. The Romans, who were pre-eminent in that subtlety of logical thinking which makes good lawyers and good laws, never succeeded, at least in the administration of criminal law, in making legal questions independent of political and private considerations. But if we bear in mind how difficult this is, and how long in modern Europe judges have been dependent on the state, a dependence which cannot even yet be said to have disappeared everywhere, we shall not condemn Gracchus for a failure which was inevitable. He was hopeful against hope, and was carried along by a noble enthusiasm, which, however barren of results, is a proof of his nobleness of heart.

Senatorial administration of the provinces.

The administration of the Roman provinces had from the first been placed under the direct supervision of the senate. It was the senate that year after year determined which province should be placed under the government of a consul or a prætor. This right was one of the principal privileges of the senate, and enabled that body to place every newly elected magistrate in that position which best suited his special capacities and the interests of the community. Unfortunately the choice of the senate had often been made on other grounds, such as personal favour or dislike, and the debates on the administration of the provinces had often given rise to something like party

spirit and party contests at a time when great principles were not at stake, and all the wrangling was of a personal character. A consul ambitious to obtain a province where glory and booty or easy gains could be expected, had to court favour with the men or set of men whose influence decided the vote in that body. As this was the rule, it followed that the senate possessed in its right over the provinces an instrument of great potency to keep the most ambitious and the most self-willed magistrates in due subordination.

Consular and prætorian provinces.

In order to deprive the senate of this source of power, C. Gracchus proposed an alteration in the customary practice, by which it was enacted that the decision on the consular provinces should be annually made, not after the election of the consuls, but before.[1] The intention was that all personal considerations should in future be excluded, because the decision was made before it could be known who would be elected as magistrates for the ensuing year. The senate would be prevented from showing favour or disfavour to individuals, and compelled to keep in view only the interest of the state.

Probable effects of the Sempronian reform.

It is difficult to say to what extent the object of the law was attained. As long as the senate had a determining influence on the elections of consuls, it mattered very little whether the consular provinces were fixed before or after the election had taken place. The senate, once bent on favouring a certain candidate, would easily find means to secure his election, and thus to give him that province which it had selected for him. The new arrangement would therefore tend to make the senate more eager in influencing the consular elections, in other words it would make them more of a sham than they already were. But if by any unforeseen circumstances the elections went against the senate, if consuls were appointed whom the senate justly or unjustly objected to, the consular provinces would be handed over to governors selected without any consideration of their peculiar fitness for the post.

[1] Cicero, *de Prov. Consul.* ii. 3; *pro Dom.* ix. 2, 4. Sall. *Jug.* 27.

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The rule of mere chance, which played such a baneful influence in the working of the republican institutions, would in an important department be substituted for the possibility of a decision made on grounds of due deliberation.

Re-election of C. Gracchus as tribune.

The reforms projected by C. Gracchus were so comprehensive, and required so much of his personal superintendence in their execution, that one year, the term of his tribunician office, did not suffice for the work. C. Gracchus absolutely required a longer period, though we are not justified in imputing to him the plan of continuing the office for life.[1] His brother Tiberius had perished in the attempt to obtain his re-election for a second year. It was a contested point whether re-election was or was not legal.[2] To settle this point, a law had since then been proposed by Carbo to declare the re-election of a tribune to be in accordance with the constitution, but this proposal was successfully opposed by the nobility, and was negatived especially through the influence of Scipio Æmilianus.[3] Nevertheless C. Gracchus was re-elected before the expiration of his year of office,[4] and it does

[1] This is Mommsen's opinion, which we have noticed as altogether untenable. Above, p. 447.

[2] In the theory of Tiberius Gracchus it was of course legal, because the will of the people was always supreme. See above, p. 396.

[3] Above, p. 413.

[4] No doubt C. Gracchus maintained that his brother had been justified in presenting himself for re-election, and claimed to do the same without special permission. Yet Appian (*Bell. Civ.* i. 21) mentions a law for the regulation of the tribunician elections, by which it was provided, that if the full number of ten candidates did not obtain the majority of votes, the deficiency in the college of tribunes should be made up in such a way that any candidate whatever should be eligible. If this law is correctly reported, it shows that re-election of tribunes was in principle excluded, but that in cases of emergency, when no new candidates could be found, it was exceptionally permitted. It is hardly probable that C. Gracchus availed himself of such a law as this, by which he might have got into the place through a back door. He evidently disdained using such a subterfuge when he asked a second and a third time for re-election. The existing law, as interpreted by the opponents of C. Gracchus, did not allow the re-election in the way that he carried it. This is evident from the disturbances which broke out in the year 110 B.C., when two tribunes attempted to stand a second time as candidates for the office, and were prevented by the intercession of their colleagues. Sallust, *Jug.* 37.

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not appear that the legality of the act was contested. Several of his proposals now received the sanction of laws or were completed in detail.

The military law of C. Gracchus.

One of the minor modifications of the constitutional practice introduced by C. Gracchus affected the military service. By a special law (*lex militaris*), this important part of the duties of Roman citizens was newly regulated, and a milder system was introduced with provisions for the protection of the soldiers from arbitrary treatment. C. Gracchus also proposed an alteration in the voting order of the comitia centuriata, by which he intended to deprive the first class of the privilege of voting always before the other classes, leaving the order to be decided by lot.[1] But his proposal was opposed and finally rejected, so that it is easy to see that in spite of all his popular measures he could not count with absolute certainty on a majority in the assembly of tribes.

Essential injustice of the whole body of Roman citizens in their relations to the allies.

This was shown also when he came forward with the most important law of his whole reform, a law which was to be the keystone of the new building.[2] All the laws hitherto passed, the laws for the distribution of land and corn, the laws for the reform of the law courts, for the security of citizens and soldiers from arbitrary punishment, were benefits conferred on the ancient body of

This intercession can be explained only on the assumption that re-election was illegal.

[1] Pseud. Sall. *De Rep. Ord.* ii. 8.

[2] Appian, *Bell. Civ.* i. 23: *τοὺς Λατίνους ἐπὶ πάντα ἐκάλει τὰ Ῥωμαίων . . . . τῶν δὲ ἑτέρων συμμάχων οἷς οὐκ ἐξῆν ψῆφον ἐν ταῖς Ῥωμαίων χειροτονίαις φέρειν ἐδίδου φέρειν ἀπὸ τοῦδε.* Plutarch, *C. Gracch.* 5: *ὁ δὲ συμμαχικὸς νόμος ἰσοψήφους ποιῶν τοῖς πολίταις τοὺς Ἰταλιώτας.* Velleius, ii. 6: dabat civitatem omnibus Italicis. Of the detail of this proposed law we know nothing. C. Gracchus seems to have distinguished between the Latins and the other allies; but what rights he proposed to give to them respectively does not appear. Mommsen, *Röm. Gesch.* ii. p. 121, asserts with the confidence usual to him that C. Gracchus proposed 'to give the full franchise to the Latins, and the former rights of the Latins to the other allies.' This is, after all, a mere guess, and it does not agree with the statement of Appian just quoted, according to which the Italian allies were to receive the right of voting (*ψῆφον φέρειν*), nor with the passage from Plutarch which says that the Italians were to be made *ἰσόψηφοι*. For the Latins never were allowed to vote in the Roman comitia.

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Roman citizens. They were privileges from which the Italians were excluded as long as they were not admitted to the full franchise; and yet it was the miserable condition of the vast population of Italy which had first moved the sympathy of Tiberius Gracchus. It was to ameliorate their condition, not less than that of the suffering proletarians of Rome, that he and his brother Caius had undertaken their project of reform. This reform they felt would be incomplete as long as the great majority of Italians, who were to all intents and purposes Romans, were excluded from the political rights which they had helped to make so valuable. Their admission to the body of citizens was therefore always on the programme of the Gracchan party. In the year 125 B.C. Fulvius Flaccus had proposed it for the Latins, but he found such opposition in the senate that he was obliged to yield. Since then, the desperate attempt of a part of the Latins to gain by force what was denied to entreaty, was punished by the destruction of the Latin colony of Fregellæ.[1] In consequence of this ill-timed insurrection, C. Gracchus and all the friends of reform were subjected to the unjust charge of having conspired for the overthrow of the republic by favouring the pretensions of the Latins. This was a charge calculated to cast the worst odium on the friends of reform. Not only the Roman nobility, but the lower class of citizens, resisted the admission of the Latins and the other Italians to a right which was treasured as a valuable privilege. The senate found itself placed in the favourable position of protector and guardian of the Roman citizens in their political supremacy over dependent allies. The nobles could represent themselves as the true champions of the people, and C. Gracchus as an insidious friend, who whilst pretending to confer a boon was really lowering the proud position of Roman citizens, and wasting on others all the good things which he had promised to his supporters. It was in vain that C. Gracchus had hoped to make sure of

[1] Above, p. 422.

the attachment of the Roman proletarians by his corn-laws, that he had given employment to a host of contractors, artisans, and workmen by his public buildings, that he had given over the law courts to the knights, and the province of Asia to the publicani. They had all taken what he had offered; but they meant to give nothing in return. Gracchus found, to his cost, that the mass of the people had a sense only of their own direct and material advantage; they abandoned him as soon as he asked them to rise to a statesmanlike view of the situation, to be just and generous and wise. In short, they proved by their conduct that the rule of democracy which he dreamt of establishing in Rome was a chimera; that the ideal world in which he lived was not to be realised with the materials he found ready to his hands.

Vain efforts of C. Gracchus to overcome this injustice.

Never was the impassioned eloquence of C. Gracchus more nobly employed than when he tried to convince his countrymen of the wrong they were doing to their Italian allies by continuing to exclude them from the rights of citizenship. He told them of the revolting tyranny and cruelty with which Roman magistrates, and even men in private stations, could venture to treat unoffending allies with impunity.[1] He expatiated on the danger to which the peace and the very existence of the Roman dominion were exposed, if those men who had hitherto supported it were ground down by oppression or shaken in their fidelity. But all his efforts were in vain. The thoughtless, selfish crowd that constituted the bulk of the sovereign people could not be roused to indignation, and showed indifference to outrage of which they were not themselves the victims. They thought it was only fair and just to pass laws which provided them with cheap bread at the expense of others; but to share any privilege or any material advantage with them, seemed to these wretches an infraction of sacred rights. They lent a deaf ear to the generous pleadings of C. Gracchus, and applauded the consul Fannius who appealed to their meanest selfish-

[1] Above, p. 192, ff.

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ness, and told them that it would be an intolerable wrong to allow multitudes of Italians to invade Rome, to fill the streets, and to oust the genuine citizens from the places which by immemorial right belonged to them. C. Fannius was a moderate politician, and actually owed his election to the consulship to the warm recommendation of C. Gracchus. Nevertheless he vehemently opposed his bill, and went even so far that before it was put to the vote, he ordered all non-citizens to leave the city, lest their presence should exercise an undue pressure on the decision of the comitia.[1] Even one of the colleagues of C. Gracchus, Livius Drusus, joined in the opposition, and threatened to prevent the voting by his tribunician intercession. The situation of C. Gracchus was so critical that he shrank from the extreme measure which his brother Tiberius had employed of threatening his colleague with deposition from his office by a popular vote. His motion was either withdrawn or negatived. It was an ominous warning for him that his popularity was waning. He might have seen that the popular government which he attempted to realise was wanting in that foundation which was its essential condition, an enlightened and independent Roman people, wise and generous enough to undertake those duties of government which the nobility had, however imperfectly, discharged hitherto with firmness and dignity.

Proposals of Livius Drusus.

The short-sightedness and waywardness of the Roman people were, immediately after the failure of C. Gracchus, made still more apparent by a new stratagem adopted by the nobility. Their plan was to supplant C. Gracchus by outbidding him in popular measures.[2] The tribune Livius Drusus, one of the colleagues of Gracchus, lent himself to this insidious manœuvre.[3] He came forward with a

[1] Plutarch, *C. Gracchus*, 12· Appian, *Bell. Civ.* i. 23.

[2] Plutarch, *C. Gracchus*, 8: ἡ δὲ βουλὴ δείσασα μὴ παντάπασιν ἄμαχος γένηται καινὴν καὶ ἀσυνήθη πεῖραν ἐπῆγε τοῖς πολλοῖς ἀποτροπῆς ἀντιδημαγωγοῦσα καὶ χαριζομένη παρὰ τὸ βέλτιστον.

[3] *C. Gracchus*, 9: ἐπιδοὺς οὖν ὁ Λίβιος εἰς ταῦτα τῇ βουλῇ τὴν ἑαυτοῦ δημαρ-

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far more comprehensive plan of colonisation, by which the whole mass of the impoverished population was to be supplied with the means of rising to an easy competence. Twelve new colonies were to be established, not in a distant province, like the colony of Gracchus in Africa, but in Italy, each to consist of three thousand settlers. The lands to be given to these were to be free from two restrictions which made the assignments of Gracchus distasteful. They were to enjoy an immunity of taxation, and the new owners were to be at liberty to dispose of them by sale or transfer. In order to make at the same time some concession to the Latins, which should cost the Roman citizens nothing, Drusus proposed that in future Latins serving in the legions should no longer be subject to be beaten with rods by Roman officers.

Scheme of the senate for counteracting the popularity of Gracchus.

It was evident to all who were not blinded by cupidity that the plan of Drusus was intended only to serve the tactics of the moment, and could not be carried into execution. There was no land in Italy at the disposal of the government for twelve colonies of three thousand settlers each. But the prospect was so alluring that it suddenly cast into the shade all that C. Gracchus proposed to do for the people, and brought about an immediate change in the disposition of the fickle multitude. C. Gracchus happened just at that time to be in Africa, occupied with the organization of the colony of Junonia, on the site of Carthage, when the magnificent scheme of Drusus was brought out. On his return, after an absence of only sixty days, he found his popularity so much reduced that he deemed it necessary to make new efforts for securing his hold on the people. He left his dwelling-house on the Palatine, the quarter inhabited chiefly by the nobles, and took up his abode in the neighbourhood of the forum, where he was in proximity to the poorer citizens. On one occasion, when public games were about to be exhibited, and stands were being erected, which according to the usual practice

χίαν νόμους ἔγραψεν οὔτε τῶν καλῶν τινος οὔτε τῶν λυσιτελῶν ἐχομένους, ἀλλὰ ἓν μόνον, ὑπερβαλέσθαι τὸν Γάϊον ἡδονῇ καὶ χάριτι τῶν πολλῶν.

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were to be let for money to those who could afford to pay, he requested the ædiles to desist from these preparations, which were calculated to take up a great deal of space, and to prevent a number of poor people from seeing the games. Upon the refusal of the ædiles he employed workmen to remove the stands on the evening before the festival, levelled the whole ground, and thus by a sort of *coup de main* enforced an equality of rights between the rich and the poor. By such a violent stretch of his tribunician authority Gracchus may have gained the applause of the populace, but he evidently did not carry with him the majority of the people, or the nobility succeeded by the means of direct and indirect corruption in alienating the people from him, for he failed in obtaining his re-election for a third year of the tribuneship (121 B.C.), whilst the consuls elect for that year were leading men of the aristocratic party, Q. Fabius Maximus and Lucius Opimius, the destroyer of Fregellæ,[1] who had been successfully opposed by C. Gracchus the year before in his attempt to obtain the consular office.[2]

Opposition to the new colony of Carthage.

The reaction against C. Gracchus and his reforms set in with full force, and it soon became apparent how unstable was that popular will which C. Gracchus had wished to make the supreme arbiter of the government. One of the first measures of the new administration was a law proposed by the tribune Minucius for stopping proceedings in the organization of the colony of Junonia or Carthage, which was then going on. On the pretext that after the destruction of Carthage the soil had been cursed for all times, that therefore it would be an act of impiety

[1] Above, p. 422.

[2] According to Plutarch, *C. Gracchus*, 12, the tribune presiding at the elections, assisted by his colleagues, falsified the returns to the prejudice of C. Gracchus: *ψήφων μὲν αὐτῷ πλείστων γενομένων, ἀδίκως δὲ καὶ κακούργως τῶν συναρχόντων ποιησαμένων τὴν ἀναγόρευσιν καὶ ἀνάδειξιν.* Yet Plutarch adds: *ἀλλὰ ταῦτα μὲν ἀμφισβήτησιν ἔχει.* It is not probable that if there had been a decisive majority in favour of C. Gracchus, his opponents would have dared to put forth, or his friends submitted to, a forgery.

to establish on it a community of Roman citizens, and on the reports coming from Africa that the new-set boundary stones and the measuring poles of the surveyors were torn out of the ground by wild beasts and carried away, the silly populace in Rome was expected to repeal the law which it had passed the year before. It is possible that religious scruples may have had some share in alarming weak minds, but a far more solid argument for giving up the colonisation of Africa was no doubt to be found in the prospect held out by the plan of Drusus to establish colonies in Italy. The enemies of Gracchus had accordingly a fair prospect of success.

Tumult on the death of Antillius.

The sending out of a colony to Africa was not one of the fundamental or essential parts of his scheme of reform. It had not even been proposed by Gracchus himself, but by his colleague Rubrius. Nevertheless it was clear that if this outwork of the democratic party were successfully attacked, the whole stronghold would be carried by successive assaults. C. Gracchus, therefore, and his friends were determined to offer the stoutest resistance. On the morning of the day fixed for taking the vote of the tribes, Flaccus harangued the people assembled on the Capitol, and C. Gracchus awaiting the issue of events was walking up and down along one side of the open place, when Antillius, a servant of the consul, advanced towards him from the direction of the temple of Jupiter, where the consul had just been sacrificing. He was carrying in his hands the entrails of the slaughtered animal, and imperiously called upon the people to make room for him. In his insolence he threatened, or seemed to threaten, C. Gracchus himself. A cry was raised that the latter was in danger. Some of his partisans rushed upon Antillius and killed him with daggers, or, according to another report, with writing-stiles.[1] C. Gracchus

[1] The reports of Plutarch (*C. Gracchus*, 13), and of Appian (*Bell. Civ.* i. 25), vary so much in detail that they cannot be brought into harmony. But in the end it makes very little difference whether Antillius was one of the consul's servants (according to Plutarch), or a common plebeian (Appian); whether he behaved with insolence to the people (Plutarch), or implored C.

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could neither prevent the rash deed nor pacify the excited multitude. He attempted to address the people, and, in doing so, interrupted unintentionally one of his colleagues who was already speaking. Great altercation ensued. The enemies of C. Gracchus charged him with violating the sacred rights of the tribunician office. The disorder and confusion were so great that the election could not be proceeded with, and as, soon after, it began to rain, the people dispersed to their homes. C. Gracchus, accompanied by his friends, retired to his dwelling near the forum, where a body of his adherents kept watch all night, to beat off, if necessary, any sudden attack. Flaccus and a band of roughs spent the night in wild revelry, and when morning dawned he had fallen into such a profound sleep that it was difficult to rouse him. The consul Opimius was on the alert during the night in the temple of Castor and Pollux, adjoining the forum. He caused a body of armed men to take possession of the Capitol, and, when the morning had come, called a meeting of the senate. By his orders the body of the murdered Antillius was brought before the assembled senators, and amidst the general indignation produced by this sight it was resolved that the consul should take the necessary measures for the safety of the republic.[1]

Seizure of the Aventine.

Meanwhile Fulvius Flaccus had slept off the fumes of wine and had marched off with a body of his followers to take possession of the Aventine hill, the original plebeian quarter of the old city, and the locality to which the plebs had retired in the second secession.[2] He had armed his

Gracchus to have pity upon his country (Appian); whether he was killed with writing-stiles (Plutarch), or a dagger (Appian). Both writers agree in the main points, that the popular assembly convened on the Capitol was disturbed by the adherents of Gracchus, that a man was murdered by them, and that thereupon the people dispersed.

[1] Cicero, *Philipp.* viii. 4, 13: uti L. Opimius consul rem publicam defenderet. *Catil.* i. 2, 4: decrevit quondam senatus, ut L. Opimius consul videret, ne quid res publica detrimenti caperet. It seems that the former of the two formulæ is the older.

[2] Cic. *de. Rep.* ii. 37. It is probable that Fulvius was prevented from occupying the Capitol by the consul's previous occupation of that hill.

men with old Gallic swords, which after his campaign against the Salyans he had hung up in his house as trophies. The temple of Diana on the Aventine, the old federal sanctuary of the Romans and Latins, served as a fort where an attack might be resisted. What Gracchus and his friends intended with these strange proceedings is not clear.[1] We have no reason to suppose that he meditated an insurrection, or hoped with his faint-hearted adherents to seize the government of the republic for himself, pushing aside consuls, senate, and all the constituted authorities. Nor can he have intended to imitate the ancient plebeians and to carry into effect a secession. He must have known after his failure in the last elections that he was not backed by the whole body of the people, nor even by the majority. Perhaps he thought of nothing else but self-defence,[2] and had good reason to be afraid of an attack from the nobility and their armed retainers. Yet, as far as we know, he had not been guilty on the previous day of any act which he would not have been able to justify. The murder of Antillius could not be laid to his charge. The disturbance of the popular assembly and the riotous conduct of the multitude, even if he could be held responsible for them, were no capital offences. The only illegal act which he could be charged with was the interruption of his colleague in his address to the people.[3] But he would have had no difficulty in clearing himself of such a charge, which after all implied only a formal offence. In the consciousness of his innocence

[1] His proceedings would be still more mysterious if it were true, as Appian (*Bell. Civ.* i. 26) reports, that he called upon the slaves to rise and fight for their freedom. The desperate Fulvius might perhaps be supposed capable of such a dangerous act, but not C. Gracchus. As nothing resulted from it, we may suppose that the historians could hardly have had accurate information of an abortive attempt, and that the design attributed to Gracchus is a mere calumny of his enemies.

[2] Appian, *Bell. Civ.* i. 26: ἐλπίσαντες εἰ τόνδε τὸν λόφον προλάβοιεν, ἐνδώσειν πρὸς τὰς συνθήκας αὐτοῖς τὴν βουλήν.

[3] According to Aurelius Victor, 65, this was the charge against C. Gracchus: et imprudens contionem a tribuno plebis avocavit; qua re arcessitus, cum in senatum non venisset . . . Aventinum occupavit.

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C. Gracchus, one might suppose, should have relied on the protection of the laws and avoided any step which might be interpreted as an appeal to violence. But it seems that he had before his eyes the fate of his brother, and that he joined Fulvius on the Aventine because he felt no longer safe in his house near the forum.

Resolution of the senate to attack Gracchus and his adherents on the Aventine.

The seizure of a strong position within the city by an armed body was an act of open violence which no government could overlook or allow to pass unpunished. The senate were deliberating on the gravity of the situation when the son of Fulvius, a youth of eighteen, appeared before them, with a proposal from his father and C. Gracchus, that order and peace should be re-established by an amicable arrangement. He was sent back with the reply, that the insurgents should lay down their arms, and their leaders should come into the senate to answer for their actions. C. Gracchus was willing to comply with this demand, but the haughty Fulvius overruled him, and again sent his son to the senate with other proposals. What these were, we are not informed. Perhaps Fulvius insisted on a declaration that an amnesty for past deeds should be promised. Whatever his demands were, they were not listened to. The consul Opimius was of opinion that it was contrary to the dignity of the senate to continue negotiations with armed rioters. He ordered young Fulvius to be arrested, issued a proclamation granting a pardon to those who voluntarily submitted, and promising to those who would bring the heads of the insurgent leaders their weight in gold. Thereupon the armed senators, the knights of the eighteen centuries, and a body of Cretan archers under the command of D. Junius Brutus[1] and the consul Opimius, set themselves in motion and marched straight against the Aventine.

Death of C. Gracchus.

The energy and decision of the consul Opimius were crowned with immediate success. The noisy crowd that filled the Aventine was scattered without offering a serious resistance. A few hundreds were killed. Fulvius was

[1] Oros. v. 12.

drawn forth from a hiding, and he and his eldest son were put to death. C. Gracchus soon saw that all was lost, and was with difficulty prevented by his friends from laying hands on himself. It is related that, falling on his knees, he implored the goddess Diana to punish the faithless and ungrateful people of Rome with eternal slavery. Then, urged by his friends to save his life by flight, he hurried down the steep declivity of the Aventine towards the river. Two of his most faithful friends, the knights Pomponius and Lætorius, accompanied him, and, as he had unfortunately sprained his foot,[1] the former of these turned round to face the pursuing enemies at the Porta Trigemina, and the other, like a second Horatius Cocles, attempted to stop them on the bridge over the Tiber.[2] They were both killed, and Gracchus soon felt that the pursuers were behind him. He called in vain for a horse. No hope was left of escape. Resolved not to fall alive into the hands of his enemies, he entered the sacred grove of the goddess Furina, and ordered a slave, his last companion, to run him through with his sword. Here his pursuers found him by the side of the slave, who would not leave his master even in death. His head was cut off and filled with lead to increase the weight, by a certain Septimuleius, a man of note and, according to Valerius, a former friend of his, who claimed and received from the consul the promised price. The body was treated with the same indignity as that of his brother Tiberius. Along with the other victims of the slaughter[3] it was dragged through the streets and cast into the Tiber.[4]

Vengeance of the nobles.

Thus the insurrection was put down. But the victorious party now, as after the death of Tiberius Gracchus, followed up their triumph with a systematic

[1] Aurel. Vict. 65: dum a templo Lunæ desilit, talum intorsit.

[2] Valer. Max. iv. 7, 2.

[3] Their number amounted, according to Plutarch, to three thousand. According to Orosius, v. 12, only 250 were killed in the street encounter, but in consequence of the succeeding prosecution of the defeated party, three thousand lost their lives.

[4] Plutarch, *C. Gracch.* 16, 17. Compare *Ægid. et Cleom.* 4. Appian, *Bell. Civ.* i. 26. Velleius, i. 6. Aurel. Vict. 65.

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prosecution of the partisans of the slain tribune. Among these was even the innocent boy, the son of Fulvius Flaccus, who had been sent by his father to parley with the consul, and had been detained when he came a second time. The houses of C. Gracchus and Fulvius were given up to the populace to be plundered; their property, even the marriage portion of Licinia, the wife of Gracchus, was confiscated. The holy places in the city, which were desecrated by the blood of citizens, were solemnly purified, and from the proceeds of the confiscated property a temple of the goddess of Concord was built on the slope of the Capitol.

When we see with what ease the nobility gained a complete victory over the popular party, it may appear strange that they did not oppose the attack from the beginning with more firmness, but allowed Gracchus to pass in their teeth a number of obnoxious laws. It seems strange that the democrats, who were so easily put down, possessed at first such irresistible power. Yet there is, after all, nothing that is contradictory in this process. The oscillations of political power point to the fact that the basis on which the constitution rested was giving way. There was no longer that universal conviction that the course which was steered was the right one. Breakers were felt to be ahead. One party after another seized the helm, and abandoned it suddenly when a new panic arose. All the efforts made to save the republic were spasmodic, and they necessarily failed because no statesman, not even the great Sulla, could see that a commonwealth grown to the colossal dimensions of the Roman empire was no longer ruled by a sovereign people assembled in the forms of the old comitia.

END OF THE FOURTH VOLUME.

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